


ARKANSAS CODE OF 1987 ANNOTATED

OFFICIAL EDITION



VOLUME 20C • TITLE 20, CH. 56-86



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ARKANSAS CODE OF 1987 ANNOTATED



VOLUME 20C 2018 Replacement TITLE 20: PUBLIC HEALTH AND WELFARE (CHAPTERS 56-86)

Prepared by the Editorial Staff of the Publisher

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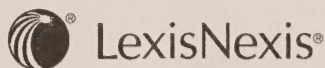
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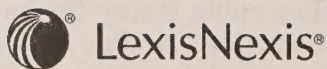


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ISBN 978-1-5221-5300-9



Matthew Bender & Company, Inc.
701 East Water Street, Charlottesville, VA 22902
www.lexisnexis.com

Sources

This volume contains legislation enacted by the Arkansas General Assembly through the 2018 Fiscal Session and the 2018 Second Extraordinary Session. Annotations are to the following sources:

Arkansas Supreme Court and Arkansas Court of Appeals Opinions
Federal Supplement
Federal Reporter
United States Supreme Court Reports
Bankruptcy Reporter
Arkansas Law Notes
Arkansas Law Review
University of Arkansas at Little Rock Law Review
American Law Reports (ALR)

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- | | |
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| 2. Agriculture | 17. Professions, Occupations, and Businesses |
| 3. Alcoholic Beverages | 18. Property |
| 4. Business and Commercial Law | 19. Public Finance |
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User's Guide

Differences in language, subsection order, punctuation, and other variations in the statute text from legislative acts, supplement pamphlets, and previous versions of the bound volume are editorial changes made at the direction of the Arkansas Code Revision Commission pursuant to the authority granted in § 1-2-303.

Many of the Arkansas Code's research aids, as well as its organization and other features, are described in the User's Guide, which appears near the beginning of the bound Volume 1A of the Code.

TITLE 20

PUBLIC HEALTH AND WELFARE

(CHAPTERS 1-16 IN VOLUME 20A; CHAPTERS 17-55 IN
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SUBTITLE 4. FOOD, DRUGS, AND COSMETICS**CHAPTER 56****GENERAL PROVISIONS**

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- vice, or cosmetic — Procedures.
- 20-56-217. Contamination with microorganisms.
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- 20-56-219. State Board of Health — Authority to regulate.
- 20-56-220. State Board of Health — Inspection.
- 20-56-221. State Board of Health — Publication and dissemination of information.
- 20-56-222. State Board of Health — Enforcement of subchapter.
- 20-56-223. State Board of Health — Enforcement of federal law.

Cross References. Poison Control — Drug Information — Toxicological Laboratory Services, § 20-13-501 et seq.

Effective Dates. Acts 1953, No. 415, § 26; Mar. 30, 1953. Emergency clause provided: “It has been found and is declared by the General Assembly of Arkansas that under the present laws Arkansas processed products cannot be sold in out-of-state markets without question; that processors placing on the market excellent goods are unable to have an unquestioned sale on account of the products of a minority of inferior processors; that there is an urgent need for providing legal protection to the processors of high quality products. Now, therefore, an emergency is declared to exist and this act being necessary for

the preservation of the public peace, health and safety shall take effect and be in force from the date of its approval.”

Acts 1977, No. 938, § 4: Mar. 31, 1977. Emergency clause provided: “It is hereby found and determined by the General Assembly that the proper, complete and accurate labeling of regulated drugs is of great concern and vital importance to the health, welfare, and safety of Arkansas citizens and that this Act is immediately necessary to assure that proper labeling of such drugs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

RESEARCH REFERENCES

ALR. Sufficiency of evidence to support product misuse defense in products liability action concerning food, drugs, and other products intended for ingestion. 58 A.L.R.4th 7.

Sufficiency of evidence to support prod-

uct misuse defense in products liability action concerning cosmetics and other personal care products. 58 A.L.R.4th 40.

Liability for injury or death caused by spoilage or contamination of beverage. 87 A.L.R.4th 804.

Liability for injury or death allegedly caused by foreign substance in beverage. 90 A.L.R.4th 12.

Liability for injury or death allegedly caused by foreign object in food or food product. 1 A.L.R.5th 1.

Liability for injury or death allegedly caused by food product containing object related to, but not intended to be present in, product. 2 A.L.R.5th 189.

Liability for injury or death allegedly caused by spoilage, contamination, or other deleterious condition of food or food

product. 2 A.L.R.5th 1.

Liability of manufacturer or seller for injury or death allegedly caused by use of contraceptive. 54 A.L.R.5th 1.

Am. Jur. 25 Am. Jur. 2d, Drugs, § 19 et seq.

35A Am. Jur. 2d, Food, § 1 et seq.

Ark. L. Rev. Case Notes — Trade Regulations — Foods, Drugs and Cosmetics — Economic Adulteration, 11 Ark. L. Rev. 442.

C.J.S. 28 C.J.S., Drugs, § 14 et seq.

36A C.J.S., Food, § 3 et seq.

20-56-201. Title.

This subchapter may be cited as the “Food, Drug, and Cosmetic Act”.

History. Acts 1953, No. 415, § 1; A.S.A. 1947, § 82-1101.

20-56-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Abandoned drug” means a drug which:

(A) Is in the possession or control of a person who is without authority under law to possess, purchase, or sell;

(B) In its present circumstances presents a danger to the public health or safety;

(C) Is not properly controlled by the person who by law has authority to possess, purchase, or sell the drug;

(D) Is the subject of a recall order by the United States Food and Drug Administration but has not been returned within a reasonable time after the publication of that order;

(E) Is adulterated, misbranded, or a new drug as defined in this subchapter or a drug intended solely for investigational use and approved by the United States Food and Drug Administration as such for which there is no approval in effect; or

(F) Is otherwise rendered unsafe for use as a result of fire, flood, or other natural disaster;

(2) “Advertisement” means all representations disseminated in any manner, or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;

(3) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body;

(4) “Board” means the State Board of Health;

(5) “Contaminated with filth” applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary and by all reasonable means, from all foreign or injurious contaminations;

(6) “Cosmetic” means:

(A) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and

(B) Articles intended for use as a component of any such articles, except that the term shall not include soap;

(7) “Counterfeit substance” means a drug which, or the container or labeling of which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who, in fact, manufactured, processed, packed, or distributed the drug and which thereby falsely purports or is represented to be the product of or to have been packed or distributed by another drug manufacturer, processor, packer, or distributor;

(8) “Device”, except when used in subdivision (16)(B) of this section, and in § 20-56-209(6), § 20-56-211(3), § 20-56-213(3), and § 20-56-215, means instruments, apparatus, and contrivances, including their components, parts, and accessories which are intended:

(A) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; or

(B) To affect the structure or any function of the bodies of humans or other animals;

(9) “Drug” means:

(A) Articles recognized in the official *United States Pharmacopoeia*, the official *Homeopathic Pharmacopoeia of the United States*, the official *National Formulary*, or in any supplement to any of them;

(B) Articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

(C) Articles other than food intended to affect the structure or any function of the bodies of humans or other animals; and

(D) Articles intended for use as a component of any article specified in subdivisions (9)(A)-(C) of this section, but does not include devices or their components, parts, or accessories;

(10) “Federal act” means the Federal Food, Drug, and Cosmetic Act;

(11) “Food” means:

(A) Articles used for food or drink for humans or other animals;

(B) Chewing gum; and

(C) Articles used for components of any such article;

(12) “Human growth hormone” means somatrem, somatropin, or an analogue of either of them;

(13) “Human growth hormone” includes both cadaver source and biosynthetic human growth hormones;

(14) “Immediate container” does not include package liners;

(15) “Label” means a display of written, printed, or graphic matter upon the immediate container of any article. A requirement made by or under authority of this subchapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if there is any, of the retail package of the article, or is easily legible through the outside container or wrapper;

(16)(A) “Labeling” means all labels and other written, printed, or graphic matter upon an article or any of its containers or wrappers, or accompanying the article.

(B) If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

(17) “New drug” means:

(A) Any drug the composition of which is such that the drug is not generally recognized among experts who are qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

(B) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

(18) “Official compendium” means the official *United States Pharmacopoeia*, the official *Homeopathic Pharmacopoeia of the United States*, the official *National Formulary*, or any supplement to any of them; and

(19) “Person” includes an individual, partnership, corporation, or association.

History. Acts 1953, No. 415, § 2; A.S.A. 1947, § 82-1102; Acts 1989, No. 249, § 1; 1991, No. 569, § 1; 1991, No. 924, § 1.

U.S. Code. The Federal Food, Drug, and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.

20-56-203. Applicability.

The provisions of this subchapter regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale and includes the sale, dispensing, and

giving of any such article and the supplying or applying of the articles in the conduct of any food, drug, or cosmetic establishment.

History. Acts 1953, No. 415, § 2; A.S.A. 1947, § 82-1102.

20-56-204. Notice of minor violations.

Nothing in this subchapter shall be construed as requiring the State Board of Health to report for the institution of proceedings under this subchapter any minor violations of this subchapter whenever the board believes that the public interest will be adequately served under the circumstances by a suitable written notice or warning to the violators.

History. Acts 1953, No. 415, § 8; A.S.A. 1947, § 82-1108.

20-56-205. Penalties — Exceptions.

(a) Any person who violates any of the provisions of this subchapter shall be guilty of a misdemeanor and for such offense shall, upon conviction, be fined an amount not to exceed five hundred dollars (\$500), or shall be sentenced to not more than one (1) year's imprisonment, or both fine and imprisonment, in the discretion of the court. For each subsequent offense and conviction thereof, the person shall be fined not less than one thousand dollars (\$1,000) or sentenced to one (1) year's imprisonment, or both fine and imprisonment, in the discretion of the court.

(b) No person shall be subject to the penalties of subsection (a) of this section for having violated § 20-56-215(1) or § 20-56-215(3) if he or she establishes a guaranty or undertaking, signed by and containing the name and address of the person residing in the State of Arkansas from whom he or she received in good faith the article, to the effect that the article is not adulterated or misbranded within the meaning of this subchapter and designating this subchapter.

(c) No publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, but not including the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him, her, or it of the false advertisement unless he, she, or it has refused, on the request of the State Board of Health, to furnish the board the name and post office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the State of Arkansas who caused him, her, or it to disseminate the advertisement.

(d)(1) Except as provided in subdivision (d)(2) of this section, any person who distributes or possesses with intent to distribute any human growth hormone or counterfeit substance purporting to be a human growth hormone for any use in humans other than the treatment of disease pursuant to the order of a physician shall be deemed guilty of a Class D felony.

(2) Any person who distributes or possesses with the intent to distribute to an individual under eighteen (18) years of age, any human growth hormone or counterfeit substance purporting to be a human growth hormone for any use in humans other than the treatment of disease pursuant to the order of a physician shall be deemed guilty of a Class C felony.

(3) Possession by any person of more than two hundred (200) capsules or tablets or more than sixteen cubic centimeters (16 cm³) of human growth hormone or counterfeit substance purporting to be a human growth hormone shall create a rebuttable presumption that the person possesses such substances with the intent to deliver in violation of this subsection. However, this presumption may be overcome by the submission of evidence sufficient to create a reasonable doubt that the person charged possessed the substance with intent to deliver.

History. Acts 1953, No. 415, § 5; A.S.A. 1947, § 82-1105; Acts 1989, No. 249, § 2; 1991, No. 569, § 2.

20-56-206. Duty of prosecuting attorney.

It shall be the duty of each prosecuting attorney to whom the State Board of Health reports any violation of this subchapter to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History. Acts 1953, No. 415, § 7; A.S.A. 1947, § 82-1107.

20-56-207. Injunctions authorized.

In addition to the remedies provided in § 20-56-205, the State Board of Health is authorized to apply to the proper circuit court for, and the court shall have jurisdiction, upon hearing and for cause shown, to grant, a temporary or permanent injunction restraining any person from violating any provision of § 20-56-215, whether or not there exists an adequate remedy at law.

History. Acts 1953, No. 415, § 4; A.S.A. 1947, § 82-1104.

20-56-208. Adulterated food.

A food shall be deemed to be adulterated:

(1)(A) If the food bears or contains any poisonous or deleterious substance which may render the food injurious to health.

(B) However, if the substance is not an added substance, the food shall not be considered adulterated under subdivision (1)(A) of this section if the quantity of the substance in the food does not ordinarily render the food injurious to health;

(2) If the food bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of § 20-56-218;

(3) If the food consists, in whole or in part, of a diseased, contaminated, filthy, putrid, or decomposed substance, or if the food is otherwise unfit for human consumption;

(4) If the food has been produced, prepared, packed, or held under insanitary conditions where the food may have become contaminated with filth, or where the food may have been rendered diseased, unwholesome, or injurious to health;

(5) If the food is the product of a diseased animal or an animal that has died otherwise than by slaughter or that has been fed, or has otherwise fed upon, the uncooked offal of other animals;

(6) If the food's container is composed, in whole or in part, of any poisonous or deleterious substance which may render the food injurious to health;

(7) If any valuable constituent has been, in whole or in part, omitted or abstracted from the food;

(8) If any substance has been substituted wholly or in part for the food;

(9) If damage or inferiority has been concealed in any manner;

(10) If any substance has been added, mixed, or packed with the food to increase the food's bulk or weight, to reduce the food's quality or strength, or to make the food appear better or of greater value than the food is;

(11)(A) If the food is confectionery and the food bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent (4/10 of 1%), harmless natural wax not in excess of four-tenths of one percent (4/10 of 1%), harmless natural gum, and pectin.

(B) However, this subdivision (11) shall not apply to:

(i) Confectionery containing less than five percent (5%) by volume of alcohol, if the alcohol is in a nonliquid form as a result of being mixed with other substances; or

(ii) Chewing gum containing harmless nonnutritive masticatory substances; or

(12) If the food bears or contains a coal tar color other than one from a batch which has been certified under authority of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301.

History. Acts 1953, No. 415, § 10; A.S.A. 1947, § 82-1110; Acts 2015, No. 1157, § 5; 2017, No. 1035, § 6.

Amendments. The 2015 amendment substituted "the food" for "it" and variants throughout the section; redesignated (1)(A) as (1)(A) and (B); substituted "subdivision (1)(A) of the section" for "this subdivision (1)(A)"; redesignated former

(1)(B) through (1)(F) as (2) through (6); substituted "human consumption" for "food" in (3); substituted "where the food" for "whereby it" twice in (4); inserted "or has otherwise fed" in (5); substituted "food" for "contents" in (6); redesignated former (2)(A) through (D) as (7) through (10); substituted "from the food" for "therefrom" in (7); substituted "for the

food" for "therefor" in (8); substituted "added, mixed, or packed with the food" for "added thereto or mixed or packed therewith so as" in (10); redesignated former (3) as (11)(A) and (B); in (11)(B), substituted "(11)" for "(3)", deleted "by

reason of its" following "confectionery", and deleted "by reason of its" following "chewing gum"; redesignated former (4) as (12); and added "21 U.S.C. § 301" in (12).

The 2017 amendment rewrote (11)(B).

CASE NOTES

ANALYSIS

Constitutionality.

Economic Adulteration.

Hearing.

Particular Products.

Regulations.

Constitutionality.

Subdivision (2)(D) [now (10)] is not too vague to be enforced. *Herron v. Ark. Whsle. Grocers Ass'n*, 227 Ark. 156, 296 S.W.2d 409 (1956).

Economic Adulteration.

Subdivision (2)(D) [now (10)] of this section is intended to prevent "economic adulteration," which makes a product, although not deleterious, appear to be better or more valuable than is actually the case. *Herron v. Ark. Whsle. Grocers Ass'n*, 227 Ark. 156, 296 S.W.2d 409 (1956).

Hearing.

Hearing before health officer was not prerequisite to prosecution in circuit court. *Meyer v. State*, 218 Ark. 440, 236 S.W.2d 996 (1951) (decision under prior law).

Particular Products.

When horsemeat was used in manufacture of products recognized as hamburger,

bologna, wieners, and frankfurters, the products were adulterated unless products were openly held out to be horsemeat. *Meyer v. State*, 218 Ark. 440, 236 S.W.2d 996 (1951) (decision under prior law).

A product composed of carmelized starch and calcium phosphate which was designed for use in coffee to increase the amount of water in relation to the amount of coffee in preparation of liquid coffee and which was shown not to be harmful or deleterious in the quantities suggested was not adulterated within the meaning of this section. *Austin v. Onnes*, 224 Ark. 1041, 278 S.W.2d 93 (1955).

The application of a red wax coating to Irish potatoes violated subdivision (2)(D) [now (10)] of this section, since the use of uncolored wax protected potatoes from deterioration the same as the colored wax. *Herron v. Ark. Whsle. Grocers Ass'n*, 227 Ark. 156, 296 S.W.2d 409 (1956).

Regulations.

The legislature, having clearly defined the types of the adulteration that are forbidden, could properly authorize the Board of Health to adopt regulations within the scope of this section. *Herron v. Ark. Whsle. Grocers Ass'n*, 227 Ark. 156, 296 S.W.2d 409 (1956).

20-56-209. Misbranded food.

A food shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If it is offered for sale under the name of another food;
- (3) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated;
- (4) If its container is so made, formed, or filled as to be misleading;
- (5) If in package form, unless it bears a label containing:
 - (A) The name and place of business of the manufacturer, packer, or distributor; and
 - (B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable

variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the State Board of Health;

(6) If any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as considered as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by § 20-56-219 or by the Federal Food, Drug, and Cosmetic Act, unless:

(A) It conforms to the definition and standard; and

(B) Its label bears the name of the food specified in the definition and standard, and, insofar as may be required by regulations, the common names of optional ingredients other than spices, flavoring, and coloring present in the food;

(8) If it purports to be or is represented as:

(A) A food for which a standard of quality has been prescribed by regulations as provided in § 20-56-219 or by the Federal Food, Drug, and Cosmetic Act and its quality falls below the standard, unless its label bears, in such manner and form as the regulations specify, a statement that it falls below the standard; or

(B) A food for which a standard of fill of container has been prescribed by regulations as provided by § 20-56-219, and it falls below the standard of fill of container applicable thereto unless its label bears, in such manner and form as the regulations specify, a statement that it falls below the standard;

(9) If it is not subject to the provisions of subdivision (7) of this section, unless it bears labeling clearly giving:

(A) The common or usual name of the food, if there is any; and

(B) In case it is fabricated from two (2) or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each.

(C) However, to the extent that compliance with the requirements of subdivision (9)(B) of this section is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board;

(10) If it purports to be or is represented for special dietary uses unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board determines to be, and by regulations prescribed as necessary in order to fully inform purchasers as to its value for such uses;

(11) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact,

provided that to the extent that compliance with the requirements of this subdivision (11) is impracticable, exemptions shall be established by regulations promulgated by the board; and

(12) If it is a product intended as an ingredient of another food and, when used according to the directions of the purveyor, will result in the final food product's being adulterated or misbranded.

History. Acts 1953, No. 415, § 11; and Cosmetic Act, referred to in this section, is codified as 21 U.S.C. § 301 et seq.

U.S. Code. The Federal Food, Drug,

CASE NOTES

Particular Products.

A product used in coffee to increase the amount of water in relation to the amount of coffee in preparation of liquid coffee and which was shown not to be harmful or

deleterious in the quantities suggested was not misbranded within the meaning of this section. *Austin v. Onnes*, 224 Ark. 1041, 278 S.W.2d 93 (1955).

20-56-210. Adulterated drug or device.

A drug or device shall be deemed to be adulterated:

(1)(A) If it consists in whole or in part of any filthy, putrid, or decomposed substance;

(B) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health;

(C) If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(D) If it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one from a batch certified under the authority of the Federal Food, Drug, and Cosmetic Act;

(2) If it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in the compendium. The determination as to strength, quality, or purity of the drug or device shall be made in accordance with the tests or methods of assay set forth in the compendium, or in the absence of or inadequacy of the tests or methods of assay, those prescribed under authority of the Federal Food, Drug, and Cosmetic Act. No drug defined in an official compendium shall be deemed to be adulterated under this subdivision (2) because it differs from the standard of strength, quality, or purity set forth in the compendium if its difference in strength, quality, or purity from the standard is plainly stated on its label. Whenever a drug is recognized in both the *United States Pharmacopoeia* and the *Homeopathic Pharmacopoeia of the United States*, it shall be subject to the requirements of the *United States Pharmacopoeia* unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the *Homeopathic Pharmacopoeia of the United States* and not to those of the *United States Pharmacopoeia*;

(3) If it is not subject to the provisions of subdivision (2) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or

(4) If it is a drug and any substance has been:

(A) Mixed or packed therewith so as to reduce its quality or strength; or

(B) Substituted wholly or in part therefor.

History. Acts 1953, No. 415, § 14; and Cosmetic Act, referred to in this section, is codified as 21 U.S.C. § 301 et seq.

U.S. Code. The Federal Food, Drug,

20-56-211. Misbranded drug or device.

A drug or device shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If in package form unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor. However, in the case of any drug subject to subdivision (11) of this section, the label shall contain the name and place of business of the manufacturer of the final dosage form of the drug and, if different, the name and place of business of the packer or distributor thereof; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count. Reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the State Board of Health;

(3) If any word, statement, or other information required by or under authority of this subchapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) If it is for use by humans and contains any quantity of narcotic or hypnotic substance, alpha-sucaine, barbituric acid, beta-sucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substances, which derivative has been designated as habit-forming by regulations promulgated under § 502(d) [repealed] of the Federal Food, Drug, and Cosmetic Act unless its label bears the name and quantity or proportion of the substance or derivative and in juxtaposition therewith the statement "Warning — May be habit-forming";

(5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:

(A) The common or usual name of the drug, if there is any; and

(B) In case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including,

whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, stophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein. However, to the extent that compliance with the requirements of this subdivision (5)(B) is impracticable, exemptions shall be established by regulations promulgated by the board;

(6) Unless its labeling bears:

(A) Adequate directions for use; and

(B) Such adequate warning against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users. However, where any requirement of subdivision (6)(A) of this section as applied to any drug or device is not necessary for the protection of the public health, the board shall promulgate regulations exempting the drug or device from the requirements;

(7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein. However, the method of packing may be modified with the consent of the board. Whenever a drug is recognized in both the *United States Pharmacopoeia* and the *Homeopathic Pharmacopoeia of the United States*, it shall be subject to the requirements of the *United States Pharmacopoeia* with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the *Homeopathic Pharmacopoeia of the United States* and not to those of the *United States Pharmacopoeia*;

(8) If it has been found by the board to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the board shall by regulations require as necessary for the protection of public health. No such regulations shall be established for any drug recognized in an official compendium until the board shall have informed the appropriate body charged with the revision of the compendium of the need for the packaging or labeling requirements and the body shall have failed within a reasonable time to prescribe the requirements;

(9)(A) If it is a drug and its container is so made, formed, or filled as to be misleading;

(B) If it is an imitation of another drug; or

(C) If it is offered for sale under the name of another drug;

(10) If it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof; or

(11) If it is a drug other than those covered by Acts 1951, No. 184 [repealed], and intended for use by humans which:

(A) Is a habit-forming drug to which subdivision (4) of this section applies;

(B) Because of its toxicity or other potentiality for harmful effect, or the method of use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a physician, dentist, or veterinarian; or

(C) Is limited by an effective application under § 505 [repealed] of the Federal Food, Drug, and Cosmetic Act to use under professional supervision by a physician, dentist, or veterinarian unless it is dispensed only:

(i) Upon a written prescription of a physician, dentist, or veterinarian; or

(ii)(a) By refilling a written or oral prescription if the refilling is authorized by the prescriber.

(b) However, a drug dispensed by filling or refilling a written prescription of a physician, dentist, or veterinarian is exempt from the requirements of this section except subdivisions (1) and (9) of this section if the drug bears a label containing:

(1) The name and address of the dispenser;

(2) The serial number and date of the prescription or its filling;

(3) The name of the prescriber;

(4) If stated in the prescription, the name of the patient; and

(5) The directions for use and cautionary statements, if any, contained in the prescription.

(c) This exemption does not apply to a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail.

History. Acts 1953, No. 415, § 15; 1977, No. 938, § 1; A.S.A. 1947, § 82-1115; Acts 2013, No. 1331, §§ 2, 3.

Amendments. The 2013 amendment repealed former (11)(C)(ii); redesignated (11)(C)(iii) as present (11)(C)(ii) and added subdivision designations; deleted "either in the original prescription or by oral order which is promptly reduced to writ-

ing by the pharmacist" at the end of (11)(C)(ii)(a); and deleted "or oral" following "written" in the introductory language of (11)(C)(ii)(b).

U.S. Code. The Federal Food, Drug, and Cosmetic Act, referred to throughout this section, is codified as 21 U.S.C. § 301 et seq.

CASE NOTES

Refills.

It was a violation of subdivision (11) of this section for a pharmacist to dispense a drug requiring a prescription to one who presented a bottle bearing a label of another pharmacy containing the name of the drug, the name of the physician purportedly originally prescribing it, and the

purported name of a patient without the written or oral refill prescription of the physician. *Ark. State Bd. of Pharmacy v. Patrick*, 243 Ark. 967, 423 S.W.2d 265 (1968).

Cited: *Floyd v. Ark. State Bd. of Pharmacy*, 248 Ark. 459, 451 S.W.2d 874 (1970).

20-56-212. Adulterated cosmetic.

A cosmetic shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use

prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual. However, this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution — This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate direction for such preliminary testing. For the purposes of this subdivision (1) and subdivision (5) of this section, the term "hair dye" shall not include eyelash dyes or eyebrow dyes;

(2) If it consists in whole or part of any filthy, putrid, or decomposed substance;

(3) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health;

(4) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or

(5) If it is not a hair dye and it bears or contains a coal tar color other than one from a batch which has been certified under authority of the Federal Food, Drug, and Cosmetic Act.

History. Acts 1953, No. 415, § 16; and Cosmetic Act, referred to in subdivision (5), is codified as 21 U.S.C. § 301 et seq.

U.S. Code. The Federal Food, Drug, seq.

20-56-213. Misbranded cosmetic.

A cosmetic shall be deemed to be misbranded:

(1) If its labeling is false or misleading in any particular;

(2) If in package form unless it bears a label containing:

(A) The name and place of business of the manufacturer, packer, or distributor; and

(B) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the State Board of Health;

(3) If any word, statement, or other information required by or under authority of this subchapter to appear on the label is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

(4) If its container is so made, formed, or filled as to be misleading.

History. Acts 1953, No. 415, § 17;
A.S.A. 1947, § 82-1117.

20-56-214. False or misleading advertisement.

(a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b)(1)(A) For the purpose of this subchapter, the advertisement of a drug or device shall also be deemed to be false if the advertisement represents the drug or device to have any effect on any of the following diseases or conditions:

- (i) Albuminuria;
- (ii) Appendicitis;
- (iii) Arteriosclerosis;
- (iv) Blood poison;
- (v) Bone disease;
- (vi) Bright's disease;
- (vii) Cancer;
- (viii) Carbuncles;
- (ix) Cholecystitis;
- (x) Diabetes;
- (xi) Diphtheria;
- (xii) Dropsy;
- (xiii) Erysipelas;
- (xiv) Gallstones;
- (xv) Heart and vascular diseases;
- (xvi) High blood pressure;
- (xvii) Mastoiditis;
- (xviii) Measles;
- (xix) Meningitis;
- (xx) Mumps;
- (xxi) Nephritis;
- (xxii) Otitis media;
- (xxiii) Paralysis;
- (xxiv) Pneumonia;
- (xxv) Poliomyelitis or infantile paralysis;
- (xxvi) Prostate gland disorders;
- (xxvii) Pyelitis;
- (xxviii) Scarlet fever;
- (xxix) Sexual impotence;
- (xxx) Sexually transmitted disease;
- (xxxi) Sinus infection;
- (xxxii) Smallpox;
- (xxxiii) Tuberculosis;
- (xxxiv) Tumors;
- (xxxv) Typhoid; or
- (xxxvi) Uremia.

(B) An advertisement of a drug or device shall not be deemed to be false under this subsection if the advertisement is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of the drug or device.

(2) However, whenever the State Board of Health determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named in subdivision (b)(1)(A) of this section, the board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for the disease, subject to such conditions and restrictions as the board may deem necessary in the interests of public health.

(3) This subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History. Acts 1953, No. 415, § 18; A.S.A. 1947, § 82-1118; Acts 2007, No. 827, § 170.

20-56-215. Prohibited acts.

The following acts and the causing thereof within the State of Arkansas are prohibited:

(1) The manufacture or sale, delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated, misbranded, or abandoned;

(2) The adulteration, misbranding, or abandoning of any food, drug, device, or cosmetic;

(3) The receipt in commerce of any food, drug, device, or cosmetic knowing it to be adulterated, misbranded, or abandoned, and the delivery or proffered delivery thereof for pay or otherwise;

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of § 20-56-217;

(5) The dissemination of any false advertisement;

(6) The refusal to permit entry or inspection or to permit the taking of a sample, as authorized by § 20-56-220;

(7) The giving of a guaranty or undertaking which is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the State of Arkansas from whom he or she received in good faith the food, drug, device, or cosmetic;

(8) The removal or disposal of a detained or embargoed article in violation of § 20-56-216;

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, or cosmetic if the act is done while the article is held for sale and results in the article's being misbranded; and

(10) Forging, counterfeiting, simulating, falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this subchapter.

History. Acts 1953, No. 415, § 3; A.S.A. 1947, § 82-1103; Acts 1991, No. 924, § 2.

20-56-216. Adulterated, misbranded, or abandoned food, drug, device, or cosmetic — Procedures.

(a)(1) Whenever an authorized agent of the State Board of Health finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated, so misbranded, or abandoned as to be dangerous or fraudulent within the meaning of this subchapter, he or she shall affix to the article a tag or other appropriate marking giving notice that the article is, or is suspected of being, adulterated, misbranded, or abandoned and has been detained or embargoed and warning all persons not to move, transfer from one (1) place to another, remove, or dispose of the article by sale or otherwise until written permission or order for movement, transfer, removal, or disposal is given by the agent or the court.

(2) It shall be unlawful for any person to move, transfer, remove, or dispose of the detained or embargoed article by sale or otherwise without permission.

(b)(1) When an article detained or embargoed under subsection (a) of this section has been found by an agent to be adulterated, misbranded, or abandoned, the agent shall petition the judge of the circuit court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of the article.

(2) When the agent has found that an article so detained or embargoed is not adulterated, misbranded, or abandoned, then he or she shall remove the tag or other marking.

(c)(1) If the court finds that a detained or embargoed article is adulterated, misbranded, or abandoned, then the article, after entry of the decree, shall be destroyed at the expense of the claimant when under the supervision of the agent of the board. All court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his or her agent.

(2) When the adulteration, misbranding, or abandoning can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article shall be so labeled or processed, has been executed, may direct that the article be delivered to the claimant thereof for labeling or processing under the supervision of an agent of the board.

(3) The expense of the supervision shall be paid by the claimant.

(4) The bond shall be returned to the claimant of the article upon representation to the court by the board that the article is no longer in violation of this subchapter and that the expenses of the supervision have been paid.

(d) Whenever the board or any of its authorized agents shall find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable articles

which are unsound or contain any filthy, decomposed, or putrid substance or which may be poisonous or deleterious to health or otherwise unsafe, those articles being declared to be a nuisance, the board or its authorized agent shall immediately condemn or destroy those articles or in any other manner render those articles unsalable as human food.

History. Acts 1953, No. 415, § 6; 1957, No. 336, § 1; A.S.A. 1947, § 82-1106; Acts 1991, No. 924, § 3.

20-56-217. Contamination with microorganisms.

(a) Whenever the State Board of Health finds after investigation that the distribution in Arkansas of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that the injurious nature cannot be adequately determined after the articles have entered commerce, it then, and in that case only, shall promulgate regulations providing for the issuance of permits to manufacturers, processors, or packers of the class of food in the locality. To these permits shall be attached such conditions governing the manufacture, processing, or packing of the class of food for such temporary period of time as may be necessary to protect the public health. After the effective date of the regulations and during the temporary period, no person shall introduce or deliver for introduction into commerce any food manufactured, processed, or packed by any manufacturer, processor, or packer unless the manufacturer, processor, or packer holds a permit issued by the board as provided by the regulations.

(b) The board is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of the permit. The board shall, immediately after prompt hearing and an inspection of the establishment, reinstate the permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.

(c) Any officer or employee designated by the board shall have access to any factory or establishment, the operator of which holds a permit from the board, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for the inspection shall be grounds for suspension of the permit until access is freely given by the operator.

History. Acts 1953, No. 415, § 12; A.S.A. 1947, § 82-1112.

20-56-218. Poisonous or deleterious substance — Regulations for use.

(a) Any poisonous or deleterious substance added to any food, except where the substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of § 20-56-208(2), but when the substance is so required or cannot be so avoided, the State Board of Health shall promulgate regulations limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of the public health. Any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of § 20-56-208(2).

(b) While such a regulation is in effect limiting the quantity of any substance in the case of any food, the food shall not, by reason of bearing or containing any added amount of the substance not in excess of the limit established by regulation, be considered to be adulterated within the meaning of § 20-56-208(1).

(c) In determining the quantity of the added substance to be tolerated in or on different articles of food, the board shall take into account the extent to which the use of the substance is required or cannot be avoided in the production of each article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

History. Acts 1953, No. 415, § 13;
A.S.A. 1947, § 82-1113.

20-56-219. State Board of Health — Authority to regulate.

(a)(1) The authority to promulgate regulations for the efficient enforcement of this subchapter is vested in the State Board of Health.

(2) The board is authorized to make the regulations promulgated under this subchapter conform, insofar as practicable, with those promulgated under the Federal Food, Drug, and Cosmetic Act.

(b)(1) Before promulgating any regulations contemplated by § 20-56-209(10), § 20-56-211(4), § 20-56-211(6)-(8), § 20-56-214(b), § 20-56-217, or subsection (c) of this section, the board shall give appropriate notice of the proposal and of the time and place for a hearing.

(2) The regulation so promulgated shall become effective on a date fixed by the board which shall not be before thirty (30) days after its promulgation.

(3) The regulation may be amended or repealed in the same manner as is provided for its adoption, except that, in the case of a regulation amending or repealing a regulation, the board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

(c)(1) Whenever in the judgment of the board such action will promote honesty and fair dealing in the interest of consumers, the board shall promulgate regulations fixing and establishing for any food

or class of food a reasonable definition and standard of identity or reasonable standard of quality or fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

(3) The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the Federal Food, Drug, and Cosmetic Act.

History. Acts 1953, No. 415, §§ 9, 19; and Cosmetic Act, referred to in this section, is codified as 21 U.S.C. § 301 et seq.
A.S.A. 1947, §§ 82-1109, 82-1119.

U.S. Code. The Federal Food, Drug,

CASE NOTES

Scope of Regulations.

Although the Board of Health is authorized to make its regulations conform to those issued by the federal agency, the state statute does not indicate a legislative intention to confine the Board of

Health to the exact field covered by the federal directives. *Herron v. Ark. Whsle. Grocers Ass'n*, 227 Ark. 156, 296 S.W.2d 409 (1956).

Cited: *Austin v. Onnes*, 224 Ark. 1041, 278 S.W.2d 93 (1955).

20-56-220. State Board of Health — Inspection.

(a) The State Board of Health or its authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose of:

(1) Inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this subchapter are being violated; and

(2) Securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the samples.

(b) It shall be the duty of the board to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this subchapter is being violated.

History. Acts 1953, No. 415, § 20;
A.S.A. 1947, § 82-1120.

20-56-221. State Board of Health — Publication and dissemination of information.

(a) The State Board of Health may cause reports to be published summarizing all judgments, decrees, and court orders which have been

rendered under this subchapter, including the nature of the charge and the disposition thereof.

(b) The board may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the board deems necessary in the interest of the public health and the protection of the consumer against fraud.

(c) Nothing in this section shall be construed to prohibit the board from collecting, reporting, and illustrating the results of the investigations of the board.

History. Acts 1953, No. 415, § 21;
A.S.A. 1947, § 82-1121.

CASE NOTES

Cited: Austin v. Onnes, 224 Ark. 1041,
278 S.W.2d 93 (1955).

20-56-222. State Board of Health — Enforcement of subchapter.

(a) The enforcement of the provisions of this subchapter and all acts ancillary to it shall be the duty of the Division of Environmental Health Protection of the Department of Health.

(b) The State Board of Health is authorized to appoint the necessary personnel to properly administer this subchapter.

History. Acts 1953, No. 415, § 22;
A.S.A. 1947, § 82-1122.

20-56-223. State Board of Health — Enforcement of federal law.

The State Board of Health is authorized to confer and cooperate with the United States Food and Drug Administration in the enforcement of the Federal Food, Drug, and Cosmetic Act as it may apply to food, liquor, drugs, and cosmetic products received in this state from other states, territories, or foreign countries.

History. Acts 1953, No. 415, § 23; and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.
A.S.A. 1947, § 82-1123.

U.S. Code. The Federal Food, Drug,

SUBCHAPTER 3 — MEDICAL MARIJUANA

SECTION.

20-56-301. Prohibition on self-service machine.

20-56-302. Prohibition on being intoxicated while at dispensary or cultivation facility.

SECTION.

20-56-303. Limitations on access to dispensary or cultivation facility.

20-56-304. Child-proof packaging — Definition.

20-56-301. Prohibition on self-service machine.

A dispensary shall not use a self-service machine such as a vending machine for the purchase and dispensing of medical marijuana.

History. Acts 2017, No. 1023, § 1.

20-56-302. Prohibition on being intoxicated while at dispensary or cultivation facility.

An individual shall not use marijuana or be intoxicated by marijuana while at a dispensary or a cultivation facility.

History. Acts 2017, No. 1023, § 1.

20-56-303. Limitations on access to dispensary or cultivation facility.

(a) Except as provided in subsection (b) of this section, a dispensary or a cultivation facility shall not allow access to the dispensary, cultivation facility, or the property of the dispensary or cultivation facility to individuals who:

(1) Do not possess a current registry identification card issued by the Department of Health or the Alcoholic Beverage Control Division; or

(2) Are not authorized by law to be at the dispensary or cultivation facility.

(b)(1) A parent with a registry identification card or a designated caregiver registry identification card may bring his or her child or children into a dispensary or cultivation facility for the purpose of purchasing usable marijuana.

(2) A parent without a designated caregiver registry identification card or registry identification card may accompany his or her child who has a registry identification card into a dispensary or cultivation facility for the purpose of purchasing usable marijuana for the child or children.

History. Acts 2017, No. 1023, § 1.

20-56-304. Child-proof packaging — Definition.

(a) As used in this section, “child-proof packaging” means packaging that cannot be opened by a child or that prevents ready access to a toxic or harmful amount of the product, and that meets the testing requirements in accordance with the method described in 16 C.F.R. § 1700.20, as existing on January 1, 2017.

(b) A dispensary or cultivation facility shall ensure that all usable marijuana under Arkansas Constitution, Amendment 98, or products containing usable marijuana be packaged or provided in child-proof packaging.

(c) A qualifying patient or designated caregiver under Arkansas Constitution, Amendment 98, shall keep all usable marijuana, includ-

ing without limitation food or drink infused with usable marijuana, in child-proof packaging.

History. Acts 2017, No. 1023, § 1.

CHAPTER 57
REGULATION OF FOOD GENERALLY

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. FOOD SERVICE ESTABLISHMENTS.
- 3. FLOUR AND BREAD ENRICHMENT ACT.
- 4. MISCELLANEOUS FOODS.

RESEARCH REFERENCES

Am. Jur. 35A Am. Jur. 2d, Food, § 1 et seq.

C.J.S. 36A C.J.S., Food, § 3 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-57-101. Sale, importation, etc., of certain food prohibited.
- 20-57-102. Salvage of food — Definitions.
- 20-57-103. Donors of canned or perishable food not liable — Exception — Definitions.

SECTION.

- 20-57-104. Food safety — Definition.

Cross References. Food, Drug, and Cosmetic Act, § 20-56-201 et seq.

Effective Dates. Acts 1893, No. 161, § 2: effective on passage.

Acts 1987, No. 451, § 3: Mar. 30, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that due to current economic conditions the ability of the Department of Health to adequately protect the public health and safety of the people of this state is threatened; that to modestly increase fees is a means of assuring that the important work of the Department continues without disruptions in service. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety shall be in full

force and effect from and after its passage and approval.”

Acts 1991, No. 378, § 8: Mar. 6, 1991. Emergency clause provided: “It is hereby found and determined by the General Assembly that due to current revenue shortfalls the services offered by the Department of Health to the citizens of the State are threatened; that due to recent developments in the food service industry it is necessary to expand coverage of regulations to protect the health and safety of the public of this State, that the immediate enactment of this bill upon passage is necessary to assure the safety and well-being of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health

and safety shall be in full force and effect from and after its passage and approval.”

20-57-101. Sale, importation, etc., of certain food prohibited.

(a) Whoever shall knowingly sell or offer or expose for sale, or bring or cause to be brought into this state to sell or offer for sale, or shall have in his, her, or their possession with intent to sell for food, the flesh of any animal dying otherwise than by slaughter, or slaughtered when diseased, or shall sell or offer for sale the flesh purported to be of one animal, knowing it to be of another species, or shall offer for sale or sell any tainted, diseased, corrupted, decayed, or unwholesome meat, fish, fowl, vegetable, produce, or provision of any kind whatever without making this fully known to the purchaser, or shall sell or offer to sell the meat of any calf which was killed before it had attained the age of six (6) weeks, shall be deemed guilty of a misdemeanor.

(b) Upon conviction, the person shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the county jail not exceeding six (6) months.

History. Acts 1893, No. 161, § 1, p. 290; C. & M. Dig., § 4826; Pope's Dig., § 6017; A.S.A. 1947, § 82-901.

CASE NOTES

Inspection.

Cities may require milk and meats to be inspected before they are sold. *Carpenter v. City of Little Rock*, 101 Ark. 238, 142 S.W. 162 (1911).

Cited: *Hixson v. Cook*, 130 Ark. 401, 197 S.W. 698 (1917); *Austin v. Onnes*, 224 Ark. 1041, 278 S.W.2d 93 (1955).

20-57-102. Salvage of food — Definitions.

(a) As used in this section, unless the context otherwise requires:

(1) “Food salvage distributor” means a person, firm, or corporation that engages in the business of distributing, peddling, or otherwise trafficking in any salvaged products enumerated in the definition of a food salvager; and

(2) “Food salvager” means a person, firm, or corporation engaged in the business of reconditioning, labeling, relabeling, repackaging, reconditioning, sorting, cleaning, culling, or by other means salvaging items and who sells, offers for sale, or distributes for human or animal consumption any salvaged food, beverage, including beer, wine and distilled spirits, vitamin, food supplement, dentifrice, drug, cosmetic, single-service food container or utensil, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means.

(b)(1) Food salvagers and food salvage distributors located in or operating in Arkansas shall obtain a permit from the Department of Health upon payment of a fee of one hundred fifty dollars (\$150) as a condition of the right to carry on the business.

(2) Permits issued under this section shall not be transferable and shall be renewed annually.

(3) The department may issue permits for less than one (1) year. The cost of the permits shall be based upon the number of months the permit is valid divided by twelve (12) months multiplied by the annual permit fee.

(c) The State Board of Health is empowered to promulgate and enforce reasonable regulations in order to assure that salvaged foods are safe for human or animal consumption, as the case may be.

(d) It shall be the duty of the Division of Environmental Health Protection of the Department of Health to administer the provisions of this section and the regulations pursuant to it.

(e) All fees levied and collected under the provisions of this section are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund.

(f)(1) A person who violates a provision of this section or a regulation pursuant to it shall be punished by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100) or shall be sentenced to imprisonment for not more than thirty (30) days, or both fine and imprisonment.

(2) Each day on which a violation of this section occurs or continues constitutes a separate offense and shall be punished accordingly.

(g) Subject to the rules and regulations which may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the department is authorized to transfer all unexpended funds relative to the food salvager's permit that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1963, No. 241, §§ 1-8; — 82-974; Acts 1987, No. 451, § 1; 1991, 1977, No. 357, § 5; A.S.A. 1947, §§ 82-967 No. 378, § 1.

20-57-103. Donors of canned or perishable food not liable — Exception — Definitions.

(a) As used in this section, unless the context otherwise requires:

(1) "Canned food" means any food commercially processed and prepared for human consumption; and

(2) "Perishable food" means any food which may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. This term includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits and vegetables, and foods which have been packaged, refrigerated, or frozen.

(b) The provisions of this section shall govern all good faith donations of perishable food which is not readily marketable due to appearance, freshness, grade, surplus, or other conditions, but nothing in this section shall restrict the authority of any appropriate agency to regulate or ban the use of the food for human consumption.

(c) All other provisions of law notwithstanding, a good faith donor of canned or perishable food which is apparently fit for human consumption at the time it is donated to a bona fide charitable or not-for-profit organization for free distribution or distribution at a nominal cost shall not be subject to criminal or civil liability arising from an injury or death due to the condition of the food unless the injury or death is a direct result of the gross negligence, recklessness, or intentional misconduct of the donor.

History. Acts 1981, No. 73, §§ 1-3;
A.S.A. 1947, §§ 82-998.1 — 82-998.3.

20-57-104. Food safety — Definition.

(a) Employees of food service establishments shall keep their hands and exposed portions of their arms clean in a manner approved by the Department of Health.

(b)(1) Except when washing fruits and vegetables, employees of food service establishments shall avoid contact of exposed ready-to-eat food with their hands by use of suitable utensils such as deli tissue, spatulas, tongs, or single-use gloves, or they shall wash their hands and exposed portions of their arms utilizing a hand-washing program approved by the department.

(2) Employees shall minimize bare-hand and bare-arm contact with exposed food that is not in a ready-to-eat form.

(c)(1) Within thirty (30) days of August 13, 2001, the department shall initiate a full review of the current version of the United States Food and Drug Administration Food Code.

(2) The department shall report its findings to the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

(d) As used in this section, “food service establishment” means any:

(1) Fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, soda fountain, sandwich shop, hotel kitchen, smorgasbord, tavern, bar, cocktail lounge, night club, roadside stand, industrial feeding establishment, school lunch project, private, public, or nonprofit organization or institution routinely serving the public, catering kitchen, commissary, or similar place in which the food or drink is prepared for sale or for service on the premises or elsewhere;

(2) Grocery store, delicatessen, meat market, retail bakery, or other establishment which sells or otherwise provides food for immediate or on-premise consumption, regardless of whether serving food for immediate consumption is the primary activity of the business; and

(3) Other eating and drinking establishment where food is served or provided for the public with or without charge.

History. Acts 2001, No. 1656, § 1.

SUBCHAPTER 2 — FOOD SERVICE ESTABLISHMENTS

SECTION.

20-57-201. Definitions.

20-57-202. [Repealed.]

20-57-203. Director of the Department of Health — Powers and duties.

20-57-204. Permit required.

SECTION.

20-57-205. Disposition of funds.

20-57-206. Duplicate fees not required.

20-57-207. Prevention of choking — Non-liability.

20-57-208. Classification by letter grades — Definition.

Cross References. Identification of catfish by restaurants, § 20-61-301 et seq. Use of imported meat in food establishment, § 20-60-101.

Effective Dates. Acts 1979, No. 58, § 3: Feb. 6, 1979. Emergency clause provided: "It is hereby found and determined by the General Assembly that under present laws certain food establishments are within the provisions of both Act 357 of 1977 and Act 114 of 1941, and are required to pay a fee and obtain a permit under each of those acts; that this results in a duplication of expense and effort to licensed establishments and to the Health Department which administers both laws; that the requirement that such food establishments obtain a permit and pay the fee under both the acts serves no useful public health purpose and that this Act is designed to correct this situation and should be given effect as soon as possible. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1980 (1st Ex. Sess.), No. 20, § 3: Jan. 25, 1980. Emergency clause provided: "It is hereby found and determined by the General Assembly that confusion exists regarding the authority of the State Health Department to conduct sanitary inspections of public school cafeterias, and this Act is immediately necessary to specifically authorize such inspections. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 903, § 6: Apr. 13, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current revenue shortfalls the services offered by the Department of Health to the citizens of this State are threatened; that due to recent developments in the food service industry it is necessary to expand the coverage of regulations to protect the health and safety of the public of this State, that the immediate enactment of this bill upon passage is necessary to assure the safety and well-being of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 378, § 8: Mar. 6, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current revenue shortfalls the services offered by the Department of Health to the citizens of the State are threatened; that due to recent developments in the food service industry it is necessary to expand coverage of regulations to protect the health and safety of the public of this State, that the immediate enactment of this bill upon passage is necessary to assure the safety and well-being of the public. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 102, § 5: Feb. 5, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the food service establishment permit fee provided for in Arkansas

Code § 20-57-204 expires on July 1, 1997; that the fee should continue; and that unless this emergency clause is enacted the fee will expire prior to the effective date of this act. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 467, § 2: Feb. 28, 2001. Emergency clause provided: "It is found and determined by the General Assembly that the food service permit fee supports the food service program of the Department of Health; that the program provides food safety training for food inspectors and industry personnel; that the present permit fee expires on July 1, 2001; that the permit fee should be continued in effect in order to provide funding for the food service program of the Department of Health; and that unless this emergency clause is adopted this act will not become effective until after July 1, 2005. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2005, No. 394, § 2: Feb. 24, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the regulation of food service establishments must be uniform in order to adequately serve the public good; that this act is necessary in order to avoid a lapse in the uniform application of regulatory requirements to food service establishments. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2011, No. 72, § 2: Feb. 18, 2011. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that with growing season quickly approaching, a crop could be lost if the effective date of this act is delayed; that a delay in the effective date of this act could cause significant economic hardship for food producers; and that this act is necessary to ensure the maximum positive effect in the community. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-57-201. Definitions.

As used in §§ 20-57-203 — 20-57-205:

(1) "Cottage food production operation" means a person who produces food items in the person's home that are not potentially hazardous foods, including without limitation:

- (A) Bakery products;
- (B) Candy;
- (C) Fruit butter;

- (D) Jams;
- (E) Jellies;
- (F) Chocolate-covered fruit and berries that are not cut; and
- (G) Similar products specified in rules adopted by the Department of Health;

(2)(A)(i) "Food service establishment" means any place where food is prepared, processed, stored, or intended for use or consumption by the public regardless of whether there is a charge for the food.

(ii) "Food service establishment" includes wholesale and retail food stores, convenience stores, food markets, delicatessens, restaurants, food processing or manufacturing plants, bottling and canning plants, wholesale and retail block and prepackaged ice manufacturing plants, food caterers, and food warehouses.

(iii) "Food service establishment" does not include supply vehicles or locations of vending machines.

(B) The following are also exempt:

- (i) Group homes routinely serving ten (10) or fewer persons;
- (ii) Daycare centers routinely serving ten (10) or fewer persons;
- (iii) Potluck suppers, community picnics, or other group gatherings where food is served but not sold;
- (iv) A person at a farmers' market that offers for sale only one (1) or more of the following:

- (a) Fresh unprocessed fruits or vegetables;
- (b) Maple syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper; or
- (c) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet (100 cu. ft.) on the premises where the person conducts business at the farmers' market;

(v) A person who offers for sale at a roadside stand only fresh fruits and fresh vegetables that are unprocessed;

(vi)(a) A cottage food production operation, on the condition that the operation offers its products directly to the consumer:

- (1) From the site where the products are produced;
- (2) At a physical or online farmers' market;
- (3) At a county fair; or
- (4) At a special event.

(b)(1) Upon request, each product offered under subdivision (2)(B)(vi)(a) of this section shall be made available to the department for sampling.

(2) Each product shall be clearly labeled and shall make no nutritional claims.

(3) The label required under subdivision (2)(B)(vi)(b)(2) of this section shall include the following:

- (A) The name and address of the business;
- (B) The name of the product;
- (C) The ingredients in the product; and

(D) The following statement in 10-point type: "This Product is Home-Produced";

(vii) A maple syrup and sorghum processor and beekeeper if the processor or beekeeper offers only maple syrup, sorghum, or honey directly to the consumer from the site where those products are processed;

(viii) A person who offers for sale only one (1) or more of the following foods at a festival or celebration, on the condition that the festival or celebration is organized by a political subdivision of the state and lasts for a period not longer than seven (7) consecutive days:

(a) Fresh unprocessed fruits or vegetables;

(b) Maple syrup, sorghum, or honey if produced by a maple syrup or sorghum processor or beekeeper; or

(c) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet (100 cu. ft.);

(ix) A farm market that offers for sale at the farm market only one (1) or more of the following:

(a) Fresh unprocessed fruits or vegetables;

(b) Maple syrup, sorghum, or honey that is produced by a maple syrup or sorghum producer or beekeeper; or

(c) Commercially prepackaged food that is not potentially hazardous, on the condition that the food is contained in displays, the total space of which equals less than one hundred cubic feet (100 cu. ft.) on the premises where the person conducts business at the farm market;

(x) An establishment that offers only prepackaged foods that are not potentially hazardous as defined by the State Board of Health; and

(xi) Ice vending machines or kiosks where ice is dispensed in the open air and that are totally self-contained; and

(3) "Food service industry" means the aggregate of food service establishments.

History. Acts 1977, No. 357, § 1; 1979, No. 734, § 1; A.S.A. 1947, § 82-997; Acts 1987, No. 903, § 1; 1989, No. 67, § 1; 1991, No. 378, § 2; 2009, No. 1403, § 1; 2011, No. 72, § 1; 2017, No. 399, §§ 1, 2.

Amendments. The 2017 amendment inserted (1)(F), and redesignated former (1)(F) as (1)(G); and inserted "physical or online" in (2)(B)(vi)(a)(2).

20-57-202. [Repealed.]

Publisher's Notes. This section, concerning the creation of the Public Health Advisory Board, was repealed by Acts 2017, No. 540, § 49. The section was de-

rived from Acts 1977, No. 357, § 2; 1979, No. 57, § 1; A.S.A. 1947, § 82-997.1; Acts 1987, No. 903, § 2; 1989, No. 67, § 2; 1997, No. 250, § 200.

20-57-203. Director of the Department of Health — Powers and duties.

The Director of the Department of Health shall have:

- (1) Power and authority to prevent the proliferation of infections, contagious, and communicable diseases resulting from unsanitary food service operations; and
- (2) Direction and control over all sanitary and quarantine measures for dealing with all such diseases within the state and to suppress the diseases and prevent their spread.

History. Acts 1977, No. 357, § 6; A.S.A. 1947, § 82-997.4.

20-57-204. Permit required.

(a) No food service establishment shall be allowed to operate unless it has procured a food establishment permit from the Division of Environmental Health Protection of the Department of Health.

(b)(1) Permits issued under this section, §§ 20-57-201, 20-57-202 [repealed], 20-57-203, and 20-57-205 are not transferable, shall be renewed annually, and shall expire one (1) year after issuance or at a time specified by the Department of Health.

(2) A late fee equal to one-half ($\frac{1}{2}$) of the renewal fee for any type of food service establishment shall be charged to renew a permit sixty (60) days after the expiration date.

(c) Any food service establishment may obtain a food service permit by paying an annual permit fee of thirty-five dollars (\$35.00) to the department and by meeting the minimum requirements established by the applicable rules and regulations.

(d) Each distinctively separate food establishment type and class as defined in §§ 20-57-201, 20-57-202 [repealed], 20-57-203 — 20-57-205 shall be required to procure a permit for that type or class per each location not to exceed a total of one hundred five dollars (\$105).

(e)(1) A temporary food establishment permit shall be procured from the division by any temporary facility operating at a fixed location for a period of not more than fourteen (14) consecutive days in conjunction with a single event or celebration.

(2) A fee of five dollars (\$5.00) shall be charged per day for each temporary food establishment permit.

(f) Public school cafeterias shall be exempt from payment of the permit fee but shall submit to inspection pursuant to the rules and regulations of the State Board of Health.

(g) Nonprofit organizations that sell food on a temporary basis for fund-raising events shall be exempt from payment of the permit fee but shall submit to inspection pursuant to the rules of the board.

(h) The following shall not be required to obtain permits, pay fees, or submit to inspections by the department but may seek the advice and assistance of the department:

- (1) Potluck suppers;

(2) Community picnics; or

(3) Other group gatherings where food is served but not sold.

(i) Any retail food store having gross sales of less than one hundred fifty thousand dollars (\$150,000) must obtain a food service permit but shall be exempt from payment of the permit fee.

(j) Any bottler of water that is not a resident of this state shall obtain a permit from the department in order to sell its bottled water within this state. The bottler shall submit to the department annually a bacteriological analysis conducted by a laboratory approved by the department, a certificate of operation from the bottler's resident state, and a permit fee of fifty dollars (\$50.00).

History. Acts 1977, No. 357, § 3; 1980 168, § 1; 1997, No. 102, § 1; 1999, No. (1st Ex. Sess.), No. 20, § 1; A.S.A. 1947, 217, §§ 1, 2; 2001, No. 467, § 1; 2001, No. § 82-997.2; Acts 1987, No. 903, § 3; 1989, 546, § 1; 2005, No. 394, § 1; 2009, No. No. 67, § 3; 1991, No. 378, § 3; 1993, No. 1403, § 2; 2011, No. 226, § 1; 2011, No. 130, § 1; 1993, No. 146, § 1; 1995, No. 1121, § 13.

20-57-205. Disposition of funds.

(a) All fees levied and collected under the provisions of §§ 20-57-102 and 20-57-204 are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund to be used exclusively by the Division of Environmental Health Protection of the Department of Health for personnel, equipment, and training of sanitarians and food service industry personnel.

(b) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds relative to the food service program that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1977, No. 357, § 4; A.S.A. 1947, § 82-997.3; Acts 1987, No. 903, § 4; 1991, No. 378, § 4.

20-57-206. Duplicate fees not required.

A food service establishment which holds a current food service permit issued by the Division of Environmental Health Protection of the Department of Health under the provisions of §§ 20-57-102 and 20-57-201, 20-57-202 [repealed], 20-57-203 — 20-57-205 shall not be required to pay a fee or obtain a permit under the provisions of §§ 20-59-206 — 20-59-211.

History. Acts 1979, No. 58, § 1; A.S.A. 1947, § 82-998.

20-57-207. Prevention of choking — Nonliability.

(a) The Director of the Department of Health shall study and approve instructions detailing first aid techniques and a poster diagramming first aid techniques designed and intended for use by a person without medical training in removing food which has become lodged in the throat of a choking victim.

(b) The director shall publish the approved instructions and poster and make them available to each food service operation in the state.

(c) Each food service operation shall post the instructions and the poster in places conspicuous to persons employed by or connected with the management of the food service operation in order that persons may become familiar with the techniques and may consult the instructions to provide relief to a choking victim.

(d) Failure of a food service operation to post the instructions and the poster as required by this section shall not subject the food service operation, any of its employees, or any persons connected with its management to any criminal penalty or to civil liability in an action for damages for personal injury or wrongful death arising from any choking emergency.

(e) Nothing in this section shall impose or be construed to impose a duty or obligation upon any food service operation, any of its employees, any person connected with its management, or any other person to remove, attempt to remove, or assist in removing food which has been lodged in the throat of a choking victim.

(f) No food service operation, employee of a food service operation, nor person connected with its management, nor any other person shall be liable in any civil action for damages for personal injury or wrongful death for not removing, not attempting to remove, or not assisting in the removal of food which has become lodged in the throat of a choking victim.

(g) No food service operation, employee of a food service operation, person connected with its management, nor any other person shall be liable in any civil action for damages for personal injury or wrongful death for any acts or omissions of any individual removing, attempting to remove, or assisting in the removal of food lodged in the throat of a choking victim in accordance with instructions supplied by the director.

History. Acts 1977, No. 204, § 1; 1985, No. 225, § 1; A.S.A. 1947, § 82-996.

20-57-208. Classification by letter grades — Definition.

(a) As used in this section, “food service establishment” means any restaurant, cafe, cafeteria, soda fountain, hotel kitchen, tavern, industrial feeding establishment, school lunchroom, grocery store, hospital kitchen, nursing home kitchen, and any private, public, or nonprofit organization or institution regularly selling or serving food to the public, or any other place in which food is regularly prepared or offered for sale whether for consumption on or off the premises.

(b) Neither the Department of Health nor any city or county department of health shall continue to classify food service establishments by letter grades on the basis of compliance with state, city, or county sanitary regulations.

History. Acts 1977, No. 526, §§ 1, 2; A.S.A. 1947, §§ 82-1124, 82-1125.

SUBCHAPTER 3 — FLOUR AND BREAD ENRICHMENT ACT

SECTION.

20-57-301. Title.
20-57-302. Definitions.
20-57-303. Applicability.
20-57-304. Penalty.
20-57-305. Powers and duties of State Board of Health and Director of the Department of Health.

SECTION.

20-57-306. Vitamins and other ingredients — Flour.
20-57-307. Vitamins and other ingredients — Bread.
20-57-308. Method of enrichment — Bread.
20-57-309. Labeling — Bread and flour.

Preambles. Acts 1945, No. 214 contained a preamble which read: "Whereas, there exists a widespread deficiency of certain constituents in foods necessary to the health and well being of the residents of the State of Arkansas, and, insofar as may be possible, the health of the resi-

dents of the State of Arkansas should be protected against such deficiency by provisions being made for the addition to flour and bread of such necessary constituents, normally present in wheat, and by provisions of formulas for such addition, and rules for enforcement thereof...."

20-57-301. Title.

This subchapter may be cited as the "Flour and Bread Enrichment Act".

History. Acts 1945, No. 214, § 1; A.S.A. 1947, § 82-934.

20-57-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Appropriate federal agency" means the United States Food and Drug Administration or any agency or department or administrative federal officer charged with the enforcement and administration of the Federal Food, Drug, and Cosmetic Act;

(2) "Bread" shall include all yeast-raised commercial bakery products, made wholly or partly from wheat flour but excludes products containing no wheat flour or products made from one hundred percent (100%) whole wheat flour and also excludes all biscuits and crackers;

(3) "Enrichment" as applied to flour or bread means the addition thereto of vitamins and other ingredients of the nature required by this subchapter, and the term "enriched flour" as defined by the United

States Food and Drug Administration, 6 Fed. Reg. 2579 (1941) and 8 Fed. Reg. 2772 (1941), and "enriched bread", 6 Fed. Reg. 2772 (1941) and 8 Fed. Reg. 10785 (1943); means flour or bread which has been enriched to conform with the requirements of this subchapter;

(4) "Flour" includes and shall be limited to flour of every kind and description, made wholly or partly from wheat, which conforms to the definition and standard of identity of flour including white flour, wheat flour, and plain flour as promulgated by the United States Food and Drug Administration, 6 Fed. Reg. 2754 (1941), but excluding whole wheat flour made only from the whole wheat berry with no part thereof removed and also excluding special packaged flours not used for bread baking such as cake, pancake, cracker, and pastry flours; and

(5) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any unincorporated organization.

History. Acts 1945, No. 214, § 2; A.S.A. 1947, § 82-935.

and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.

U.S. Code. The Federal Food, Drug,

20-57-303. Applicability.

(a) The terms of this subchapter shall not apply to flour or bread which is made from the entire wheat berry with no parts of the wheat removed from the mixture. In cases of flour or bread containing mixtures of the whole wheat berry and white flour or mixtures of various portions of the wheat berry, the products shall have a vitamin and mineral potency at least equal to enriched flour or enriched bread as described in this subchapter.

(b) The terms of this subchapter shall not apply to flour ground for the wheat producer whereby the miller is paid in wheat or feed for the grinding service rendered, except insofar as the mill may manufacture tollwheat into flour and sell or offer for sale the flour, whereupon this subchapter shall be applicable.

(c) The provisions of this subchapter shall not apply to farmers exchanging their wheat for flour or having the wheat ground into flour and disposing of the wheat for their own use or for the use of farm labor on their farms.

History. Acts 1945, No. 214, § 3; A.S.A. 1947, § 82-936.

20-57-304. Penalty.

Any person who violates any of the provisions of this subchapter, or the orders, rules, or regulations promulgated by the Director of the Department of Health under authority thereof, shall upon conviction be subject to a fine for each and every offense in a sum not exceeding five hundred dollars (\$500) or to imprisonment for not more than six (6) months, or both fine and imprisonment.

History. Acts 1945, No. 214, § 8; A.S.A. 1947, § 82-941.

20-57-305. Powers and duties of State Board of Health and Director of the Department of Health.

(a) The State Board of Health is authorized as the administrative agency and is directed:

(1) To make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this subchapter, including, but without being limited to, such orders, rules, and regulations as it is specifically authorized and directed to make;

(2) From time to time to adopt such regulations changing or adding to the required ingredients for flour or bread specified in §§ 20-57-302, 20-57-303, and 20-57-306 as shall be necessary to conform to the definitions and standard of identity of enriched flour and enriched bread from time to time promulgated by the appropriate federal agency pursuant to the Federal Food, Drug, and Cosmetic Act.

(b) All orders, rules, and regulations adopted by the board pursuant to this subchapter shall be published in the manner prescribed in subsection (c) of this section and, within the limits specified by this subchapter, shall become effective upon such date as the Director of the Department of Health shall fix.

(c) Whenever under this subchapter publication of any notice, order, rule, or regulation is required, the publication shall be made at least three (3) times in ten (10) days in newspapers of general circulation in three (3) different sections of the state.

(d)(1) The director is authorized to collect samples for analysis and to conduct examinations and investigations for the purposes of this subchapter through any officers or employees under his or her supervision.

(2) All officers and employees shall have authority to enter and inspect any factory, mill, warehouse, shop, or establishment where flour or bread is manufactured, processed, packed, sold, or held or any vehicle and any flour or bread therein, and all pertinent equipment, materials, containers, and labeling.

History. Acts 1945, No. 214, § 7; A.S.A. and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.

U.S. Code. The Federal Food, Drug,

20-57-306. Vitamins and other ingredients — Flour.

(a)(1) It shall be unlawful for any person to manufacture, mix, compound, sell, or offer for sale within this state or to ship into this state for human consumption in this state any flour, as defined in § 20-57-302, unless the following vitamins and other ingredients are contained in each pound of flour:

(A) Not less than two milligrams (2 mg) of vitamin B1 (thiamin);

(B) Not less than one and two-tenths milligrams (1.2 mg) of riboflavin;

(C) Not less than sixteen milligrams (16 mg) of niacin (nicotinic acid) or nicotinic acid amide (niacin amide); and

(D) Not less than thirteen milligrams (13 mg) of iron (Fe).

(2) In addition to the above ingredients, the enrichment of self-rising flour requires not less than five hundred milligrams (500 mg) of calcium.

(b) The ingredients and amounts listed in subsection (a) of this section are in accordance with the definition of enriched flour as promulgated by the United States Food and Drug Administration, 21 C.F.R. § 137.165.

(c) The enrichment of flour shall be accomplished by a milling process, addition of vitamins from natural or synthetic sources, addition of minerals, by a combination of these methods, or by any method which is permitted by the United States Food and Drug Administration with respect to flour introduced into interstate commerce.

(d) The Director of the Department of Health is empowered with the authority and directed to change, or add to, the specifications for ingredients and the amounts thereof required to conform to the federal definition of enriched flour when promulgated or as may from time to time be amended.

(e) Iron shall be added only in forms which are assimilable and harmless and which do not impair the enriched flour.

(f)(1) The terms of this section shall not apply to flour sold to distributors, bakers, or other processors if the purchaser furnishes to the seller a certificate in such form as the director shall by regulation prescribe, certifying that the flour will be:

(A) Resold to a distributor, baker, or other processor;

(B) Used in the manufacture, mixing, or compounding of flour, white bread, or rolls enriched to meet the requirements of this subchapter; or

(C) Used in the manufacture of products other than flour, white bread, or rolls.

(2) It shall be unlawful for any purchaser so furnishing any such certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History. Acts 1945, No. 214, § 3; A.S.A. 1947, § 82-936; Acts 2015, No. 1157, § 6.

Amendments. The 2015 amendment redesignated the former introductory language of (a) as the introductory language of (a)(1); redesignated former (a)(1)

through (4) as (a)(1)(A) through (D); redesignated former (a)(5) as (a)(2); and, in (a)(2), deleted "The enrichment of self-rising flour shall require" at the beginning and inserted "the enrichment of self-rising flour requires" preceding "not less".

20-57-307. Vitamins and other ingredients — Bread.

(a) It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, or to receive in interstate shipment for sale for human consumption in this state, any bread, as defined in § 20-57-302, unless

the following vitamins and other ingredients are contained in each pound of the bread:

(1) Not less than one and one-tenth milligram (1.1 mg) of Vitamin B1 (thiamin);

(2) Not less than seven-tenths milligram (0.7 mg) of riboflavin;

(3) Not less than ten milligrams (10.0 mg) of niacin (nicotinic acid) or nicotinic acid amide (niacin amide); and

(4) Not less than ten milligrams (10.0 mg) of iron (Fe).

(b) These ingredients and amounts are in accordance with the definition of enriched bread as promulgated by the United States Food and Drug Administration, 21 C.F.R. § 136.115.

History. Acts 1945, No. 214, § 4; A.S.A. 1947, § 82-937.

20-57-308. Method of enrichment — Bread.

The enrichment of bread may be accomplished through the use of enriched flour, other enriched ingredients, synthetic vitamins, harmless iron salts, or by any combination of harmless methods which will produce enriched bread which meets the requirements of § 20-57-306.

History. Acts 1945, No. 214, § 5; A.S.A. 1947, § 82-938.

20-57-309. Labeling — Bread and flour.

It shall be unlawful to sell or offer for sale in this state any enriched flour or enriched bread which fails to conform to the labeling of the Federal Food, Drug, and Cosmetic Act and the regulations promulgated thereunder by the appropriate agency with respect to flour or bread introduced into interstate commerce.

History. Acts 1945, No. 214, § 6; A.S.A. 1947, § 82-939.

and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.

U.S. Code. The Federal Food, Drug,

SUBCHAPTER 4 — MISCELLANEOUS FOODS

SECTION.

20-57-401. Kosher foods.

20-57-402. Honey.

20-57-401. Kosher foods.

A person is guilty of a misdemeanor and punishable by a fine of not more than five hundred dollars (\$500) or by imprisonment of not less than thirty (30) days or not more than six (6) months, in the discretion of the court, who:

(1) Shall sell or expose for sale in any restaurant, delicatessen, hotel, or other place where food products are sold, any article of food falsely represented as kosher either by direct statements orally or in writing,

or by the display of the word “kosher” in English or Hebrew letters, by the display of any sign or mark in simulation of the word, or by the display of any insignia, six-pointed star, or any mark which might reasonably be calculated to deceive or lead a reasonable person to believe that a representation is being made that the food exposed for sale, or sold, is kosher or is prepared in accordance with the Orthodox Hebrew religious requirements;

(2) With intent to defraud, sells or exposes for sale any meat or meat preparations and falsely represents the product to be kosher, whether the meat preparations are raw or prepared for human consumption, or as having been prepared under, and of products sanctioned by, the Orthodox Hebrew religious requirements, or who falsely represents any food product or the contents of any package or contained in a container to be so constituted and prepared by having or permitting to be inscribed upon it the word “kosher” in any language; or

(3) Sells or exposes for sale in the same place of business both kosher and nonkosher meat or meat preparations, either raw or prepared for human consumption, and who fails to indicate on his or her window signs and all display advertisements, in black letters at least four inches (4”) in height: “KOSHER AND NONKOSHER MEAT SOLD HERE”, or who exposes for sale in any show window or place of business both kosher and nonkosher meat or meat preparations either raw or prepared for human consumption, and who fails to display over each kind of meat or meat preparations so exposed a sign in black letters at least four inches (4”) in height, reading: “KOSHER” and “NONKOSHER” as the case may be.

History. Acts 1949, No. 253, § 1; A.S.A. 1947, § 82-957.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of Regulations Dealing with Misrepresentation in Sale of Kosher Food. 3 A.L.R.7th Art. 6 (2015).

Ark. L. Rev. Legal Control of Business in Arkansas, 5 Ark. L. Rev. 137.

20-57-402. Honey.

(a) Unless the product is pure honey manufactured by honeybees, it is unlawful for any person to:

(1) Package any product and label the product as “honey” or “imitation honey” or to use the word “honey” in any prominent location on the label of the product; or

(2) Sell or offer for sale any product that is labeled “honey” or “imitation honey” or which contains a label with the word “honey” prominently displayed thereon.

(b)(1) Any person violating the provisions of this section shall be guilty of a violation and upon conviction shall be punished by a fine of

not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

(2) Each violation shall constitute a separate offense.

History. Acts 1973, No. 513, §§ 1, 2;
A.S.A. 1947, §§ 82-985, 82-986; Acts 2005,
No. 1994, § 130.

CHAPTER 58

EGGS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS EGG MARKETING ACT OF 1969.

RESEARCH REFERENCES

Am. Jur. 35A Am. Jur. 2d, Food, § 33.
C.J.S. 36A C.J.S., Food, § 3 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-58-101. [Repealed.]

20-58-101. [Repealed.]

Publisher's Notes. This section, concerning marking of cold-storage eggs, was repealed by Acts 2013, No. 1145, § 3. The section was derived from Acts 1931, No.

223, §§ 1, 2; Pope's Dig., §§ 3467, 3468; A.S.A. 1947, §§ 82-932, 82-933; Acts 2005, No. 1994, § 131.

SUBCHAPTER 2 — ARKANSAS EGG MARKETING ACT OF 1969

SECTION.

20-58-201. Title.
20-58-202. Definitions.
20-58-203. Applicability.
20-58-204. Penalties.
20-58-205. Employees of Arkansas Livestock and Poultry Commission — Powers and duties.
20-58-206. Arkansas Livestock and Poultry Commission — Establishment of standards.
20-58-207. Prohibited acts.
20-58-208. Display of grade and size required.

SECTION.

20-58-209. Packing and grading permit.
20-58-210. Refrigeration of eggs — Temperature and labeling requirements.
20-58-211. Sales to retailers or manufacturers.
20-58-212. Retail sales.
20-58-213. Possessor of eggs deemed owner — Exceptions.
20-58-214. Enforcement.
20-58-215. Inspection fees.
20-58-216. Audits.

Effective Dates. Acts 1969, No. 220, § 22: July 1, 1969.

Acts 1970 (1st Ex. Sess.), No. 12, § 4: Mar. 13, 1970. Emergency clause provided: "It is hereby found and determined by the General Assembly that clarification of Act 220 of 1969 is necessary in order to provide adequate procedures for the issuance of shell egg processing plants and egg candling rooms, and to establish reasonable and adequate fees for the maintenance and operation of the egg inspection

and grading program fees to support the egg grading and inspection program of the Livestock and Poultry Commission, and that the immediate passage of this act is necessary to accomplish these purposes. Therefore, an emergency is hereby declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-58-201. Title.

This subchapter shall be known and cited as the "Arkansas Egg Marketing Act of 1969".

History. Acts 1969, No. 220, § 1; A.S.A. 1947, § 82-1301.

20-58-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs;

(2) "Candle" means to determine the interior quality based on the use of a candling light as defined in the United States standards;

(3) "Case" means a container of thirty dozen (30 doz.) shell eggs;

(4) "Consumer" means any person using eggs for food and shall include restaurants, hotels, cafeterias, hospitals, state institutions, and any other establishments serving food to be consumed or produced on the premises, but shall not include the United States Armed Forces or any other federal agency or institution;

(5) "Container" includes any carton, basket, case, cart, pallet, or other receptacle:

(A) "Immediate container" means any consumer package or other container in which shell eggs, not consumer-packaged, are packed; and

(B) "Shipping container" means any container used in packing shell eggs packaged in an immediate container;

(6) "Dealer-wholesaler" means a person engaged in the business of buying eggs from producers or other persons on his or her own account and selling or transferring eggs to other dealer-wholesalers, processors, retailers, or other persons and consumers. A dealer-wholesaler further means a person engaged in producing eggs from his or her own flock and disposing of any portion of this production on a graded basis;

(7) "Denatured" means rendering unfit for human food by treatment or the addition of a foreign substance as approved by the Administrator of the Agricultural Marketing Service United States Department of Agriculture;

(8) "Eggs" means the products of the domesticated chicken hen and any other eggs offered for sale for human consumption;

(9) "Inedible and unfit for human food" means eggs described as black rots, white rots, mixed rots or addled eggs, sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, eggs containing embryo chicks at or beyond the blood ring stage, and any eggs that are adulterated as that term is defined in the Food, Drug, and Cosmetic Act, § 20-56-201 et seq.;

(10) "Packer" means any person who grades, sizes, candles, and packs eggs for purposes of resale;

(11) "Person" means any individual, partnership, association, business trust, corporation, or any organized group of persons, whether incorporated or not;

(12) "Possession" means that the fact of possession by any person engaged in the sale of a commodity is prima facie evidence that the commodity is for sale;

(13) "Processor" means a person who operates a plant for the purpose of breaking eggs for freezing, drying, or commercial food manufacturing;

(14) "Retailer" means any person who sells eggs to a consumer;

(15) "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade; and

(16) "The Egg Products Inspection Act" means Pub. L. No. 91-597, Egg Products Inspection Act, dated December 29, 1970.

History. Acts 1969, No. 220, § 2; 1985, No. 301, § 1; A.S.A. 1947, § 82-1302; Acts 1993, No. 115, § 1.

tion Act, Pub. L. No. 91-597, referred to in this section, is codified as 21 U.S.C. § 1031 et seq.

U.S. Code. The Egg Products Inspec-

20-58-203. Applicability.

This subchapter shall be applicable to all retailers of eggs except that retailers shall be permitted to sell eggs when the eggs are purchased directly from producers who own fewer than two hundred (200) hens, provided that the following requirements are met:

(1) The eggs are washed and clean;

(2) The eggs are prepackaged and identified as ungraded with the name and address of the producer;

(3) The used cartons are not used unless all brand markings and other identification are obliterated; and

(4) The eggs are refrigerated and maintained at a temperature of forty-five degrees Fahrenheit (45° F) or below.

History. Acts 1969, No. 220, § 3; A.S.A. 1947, § 82-1303; Acts 1997, No. 700, § 1.

20-58-204. Penalties.

(a) Any person, firm, or corporation violating any of the provisions of this subchapter or regulations of the Arkansas Livestock and Poultry Commission shall be guilty of a violation and shall upon conviction:

(1) For the first offense, be fined not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100);

(2) For the second offense, be fined not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250); and

(3) For the third offense, be fined not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500).

(b) In addition to fines, in the discretion of the court:

(1) For the first offense, his or her permit may be suspended not more than thirty (30) days;

(2) For the second offense, his or her permit may be suspended not more than sixty (60) days; and

(3) For the third offense or any subsequent offense, his or her grading and packing permit may be revoked.

(c) Public notice shall be made upon conviction of violation under this subchapter.

History. Acts 1969, No. 220, § 19;
A.S.A. 1947, § 82-1322; Acts 2005, No.
1994, § 132.

20-58-205. Employees of Arkansas Livestock and Poultry Commission — Powers and duties.

All duties and functions required to be performed by the Arkansas Livestock and Poultry Commission under the provisions of this subchapter shall be performed by the commission or its authorized employees.

History. Acts 1969, No. 220, § 16;
A.S.A. 1947, § 82-1319.

20-58-206. Arkansas Livestock and Poultry Commission — Establishment of standards.

(a) The Arkansas Livestock and Poultry Commission shall establish standards for the grading, classification, and marking of shell eggs bought and sold by any person, firm, or corporation in the State of Arkansas.

(b) The standards shall, on the date of the sale to the consumer, conform to the minimum standards promulgated by the United States Department of Agriculture as defined in the “United States Standards, Grades and Weight Classes for Shell Eggs”, authorized under 7 U.S.C. § 1624, effective July 11, 1952, and amendments thereto.

(c) The standards of quality of the United States Department of Agriculture are adopted as the standards of quality for the enforcement of this subchapter. Any egg described by the United States Department

of Agriculture as being inedible shall be deemed inedible under the provisions of this subchapter.

History. Acts 1969, No. 220, §§ 7, 23;
A.S.A. 1947, §§ 82-1307, 82-1308.

20-58-207. Prohibited acts.

(a) No person, firm, or corporation shall sell, traffic in, or deliver to the retail or consuming trade any eggs unfit for human food.

(b) It shall be unlawful to:

(1) Prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, sell in bulk or containers, or advertise by sign, placard, or otherwise any eggs for human consumption which are mislabeled or deceptive or that are or contain inedible eggs not denatured or eggs that have been incubated;

(2) Use descriptive terminology as to eggs that have not been graded and sized according to the standards set forth by the Arkansas Livestock and Poultry Commission; or

(3) Use descriptive terminology such as “fresh”, “farm”, “country”, etc., or to represent the same to be “fresh” any eggs excepting those eggs that meet the minimum requirements of Grade A or higher according to the standards set forth by the commission.

(c) No eggs shall be sold for resale to consumers below U.S. Consumer Grade B.

(d) All restaurants, hotels, hospitals, and other eating establishments which knowingly purchase, sell, serve, or use in food preparation eggs below U.S. Consumer Grade B quality will be in violation of this subchapter.

History. Acts 1969, No. 220, §§ 4, 14,
18; A.S.A. 1947, §§ 82-1304, 82-1315, 82-
1321; Acts 1997, No. 700, § 2.

20-58-208. Display of grade and size required.

(a) All eggs advertised or displayed for sale for human food shall designate the correct grade and size. The designation shall also appear on the exterior of the container in which the eggs are offered for sale.

(b) Restaurants, hotels, and other eating places using eggs below “A” quality shall be required to display a placard of heavy cardboard of not less than eight inches by eleven inches (8" × 11"), stating the quality and weight of the eggs used by the establishment in a location where it can easily be seen by the customers or, in lieu thereof, place this information on the menu.

History. Acts 1969, No. 220, § 8; 1985,
No. 301, § 2; A.S.A. 1947, § 82-1309.

20-58-209. Packing and grading permit.

(a) All packing and grading permits shall be conspicuously posted in the place of business to which they apply.

(b) The permit year shall be twelve (12) months or any fraction thereof beginning July 1 and ending June 30 of each year.

(c) No permit shall be transferable, but it may be moved from one (1) place to another with the consent of the Arkansas Livestock and Poultry Commission.

(d) No person shall operate a shell egg processing plant and egg candling room or an egg breaking plant before the plant or room has been approved by the commission or its authorized agent and a permit issued.

History. Acts 1969, No. 220, § 12; 1970 (1st Ex. Sess.), No. 12, § 1; A.S.A. 1947, § 82-1317.

20-58-210. Refrigeration of eggs — Temperature and labeling requirements.

(a) All shell eggs packed in containers for the purpose of resale to consumers shall be stored and transported under refrigeration at an ambient temperature no greater than forty-five degrees Fahrenheit (45° F) or seven and two-tenths degrees Celsius (7.2° C).

(b) All shell eggs that are packed into containers for the purpose of resale to the consumer shall be labeled with the following statement: "Keep refrigerated at or below 45 degrees Fahrenheit".

(c) Every person, firm, or corporation selling eggs for the purpose of resale to the consumer must store and transport shell eggs under refrigeration at an ambient temperature no greater than forty-five degrees Fahrenheit (45° F) or seven and two-tenths degrees Celsius (7.2° C), and all containers of eggs must be labeled with the following statement: "Keep refrigerated at or below 45 degrees Fahrenheit". This includes retailers, institutional users, dealer-wholesalers, food handlers, transportation firms, or any person who delivers to the retail or consuming trade.

(d) Packers shall not be responsible for the interior quality of eggs unless all recommended handling procedures in this section are followed by all parties after the sale of the eggs by the packer.

History. Acts 1969, No. 220, § 15; A.S.A. 1947, § 82-1316; Acts 1993, No. 115, § 2.

20-58-211. Sales to retailers or manufacturers.

(a) Every person, firm, or corporation selling eggs to a retailer or manufacturer shall furnish an invoice showing the size and quality of the eggs according to the standards prescribed by this subchapter

together with the name and address of the person by whom the eggs were sold.

(b) This invoice shall be retained for two (2) years.

History. Acts 1969, No. 220, § 6; A.S.A. 1947, § 82-1306.

20-58-212. Retail sales.

(a) Any and all eggs offered for sale at retail shall be prepackaged.

(b) All eggs offered for sale at retail shall be plainly marked as to grade and size with letters not less than three-eighths inch ($\frac{3}{8}$ " in height.

(c) Each container of eggs offered for sale at retail shall bear on the exterior of the container the following:

(1) The identity of the packer must be by registry of United States Department of Agriculture plant number or by state permit number or name of packer;

(2) The date the eggs were packed; and

(3) The correct grade and size of the eggs.

History. Acts 1969, No. 220, §§ 9-11; A.S.A. 1947, §§ 82-1310 — 82-1312.

20-58-213. Possessor of eggs deemed owner — Exceptions.

All eggs shall be considered the property of the person in whose possession they are found except those in the custody of common carriers or a public warehouse where the owner is identified by record.

History. Acts 1969, No. 220, § 5; A.S.A. 1947, § 82-1305.

20-58-214. Enforcement.

(a)(1) The Arkansas Livestock and Poultry Commission shall enforce the provisions of this subchapter and is authorized to make and promulgate such regulations as may be necessary thereto.

(2) The regulations shall be publicized and become effective ninety (90) days after adoption.

(b)(1) The commission and its authorized employees or agents are authorized to enter any store, vehicle, market, or any other business or place where eggs are bought, stored, sold, offered for sale, or processed. The commission is authorized to make such inspections as needed of eggs to determine if the grades of the eggs conform to grades as labeled on the exterior of the container.

(2) If the inspection determines that the eggs in the container do not conform to the grade as labeled on the exterior of the container, the commission or its employees or agents are authorized to examine the invoices and such other records as are needed to determine the cause and place of the violation of the regulation of this subchapter.

(c) The commission and its authorized employees shall have the power to stop sale of and impound for evidence any containers of eggs offered for sale which are in conflict with any provisions of this subchapter.

History. Acts 1969, No. 220, § 17; A.S.A. 1947, § 82-1320.

20-58-215. Inspection fees.

(a) For the purpose of financing the administration and enforcement of this subchapter, the State of Arkansas, through the Arkansas Livestock and Poultry Commission, shall collect an inspection fee from the processor, packer, or dealer-wholesaler, or from any of them.

(b) The inspection fee and annual permit fee will be set by the commission after review and consultation with the Poultry Federation for all shell eggs and egg products processed or sold in the State of Arkansas.

(c) All fees, interest, penalties, or costs collected by the commission as authorized in this section shall be deposited into the State Treasury within thirty (30) days of collection thereof.

(d) Upon receipt of the funds, the Treasurer of State shall, after deducting therefrom the collection charge authorized by law, credit the net amount thereof to the credit of the fund to be known as the "Poultry and Egg Grading Fund", to be used for consumer merchandising, consumer education, maintenance, operation, and other expenses of all functions imposed by the provisions of this subchapter.

History. Acts 1969, No. 220, § 13; 1970 (1st Ex. Sess.), No. 12, § 2; 1985, No. 301, § 3; A.S.A. 1947, § 82-1314.

20-58-216. Audits.

(a) Annual audits of all permit holders, including out-of-state permit holders, will be performed by the Arkansas Livestock and Poultry Commission to ensure proper reporting of egg inspection fees.

(b)(1) Travel expenses incurred in conducting out-of-state audits are to be reimbursed to the commission by out-of-state permit holders.

(2) The State of Arkansas's out-of-state daily allowance for meals and lodging will be the maximum amount reimbursable, plus travel expenses to and from locations of permit holders.

History. Acts 1969, No. 220, § 24, as added by Acts 1985, No. 301, § 4; A.S.A. 1947, § 82-1323.

CHAPTER 59

MILK AND DAIRY PRODUCTS

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. REGULATION OF MANUFACTURE AND SALE GENERALLY.
3. MELLORINE.
4. GRADE "A" MILK PROGRAM ACT.
5. GRADE "A" MILK PROGRAM ADVISORY COMMITTEE.
6. PURCHASES BY MILK PROCESSORS.
7. MILK LABORATORY ANTIBIOTIC DRUG TESTING PROGRAM.

RESEARCH REFERENCES

Am. Jur. 35A Am. Jur. 2d, Food, § 37 et seq.

C.J.S. 36A C.J.S., Food, § 28 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-59-101. Division of Environmental Health Protection — Regulatory powers and duties.

SECTION.

20-59-102. [Repealed.]

Effective Dates. Acts 1977, No. 409, § 7: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the Seventy-First General Assembly that the Arkansas Milk Program is a worthwhile program and is necessary for the inspection of milk producers, distribu-

tors and processors. Therefore, an emergency is declared to exist and this Act being necessary for the preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1977."

20-59-101. Division of Environmental Health Protection — Regulatory powers and duties.

(a) The Division of Environmental Health Protection of the Department of Health shall assume all regulatory duties, powers, and responsibilities now exercised by the various city or county health departments of the State of Arkansas pertaining to production and distribution of Grade "A" milk and milk products.

(b) The division shall provide permits and inspection and laboratory services to all the milk producers, processors, and distributors.

History. Acts 1977, No. 409, § 1; A.S.A. 1947, § 82-4001.

20-59-102. [Repealed.]

Publisher's Notes. This section, concerning ownership of Little Rock Milk Program assets, was repealed by Acts

2013, No. 1145, § 4. The section was derived from Acts 1977, No. 409, § 3; A.S.A. 1947, § 82-4003.

SUBCHAPTER 2 — REGULATION OF MANUFACTURE AND SALE GENERALLY

SECTION.

- 20-59-201. Definitions.
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- 20-59-205. Right of review — Definition.
- 20-59-206. Dairy plant license.
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- 20-59-213. Dairy products from another state.
- 20-59-214. Unlawful acts — Insanitary plants.
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- 20-59-216. Unlawful acts — Improper method of testing.
- 20-59-217. Unlawful acts — Improper scales.
- 20-59-218. Unlawful acts — Improper centrifuges.
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- 20-59-220. Unlawful acts — Unclean instruments.
- 20-59-221. Unlawful acts — Improper temperature for tests.
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- 20-59-223. Unlawful acts — Handling in insanitary places.
- 20-59-224. Unlawful acts — Products of diseased animals — Contaminated products.
- 20-59-225. Unlawful acts — Preservatives.
- 20-59-226. Unlawful acts — Removing label of health officer.

SECTION.

- 20-59-227. Unlawful acts — Unpasteurized products.
- 20-59-228. Unlawful acts — Products below standard.
- 20-59-229. Unlawful acts — Cream graded for buttermaking — Price differential.
- 20-59-230. Unlawful acts — Mold or sediment test.
- 20-59-231. Unlawful acts — Empty cans inverted.
- 20-59-232. Unlawful acts — Records of cream buyers — Monthly reports.
- 20-59-233. Unlawful acts — Place of testing or grading — Delivery to carrier in unwholesome condition.
- 20-59-234. Unlawful acts — Operation without permit.
- 20-59-235. Unlawful acts — Labeling of cheese.
- 20-59-236. Unlawful acts — Removal of label.
- 20-59-237. Unlawful acts — Renovation of butter or cheese.
- 20-59-238. Unlawful acts — Labeling of renovated butter.
- 20-59-239. Unlawful acts — Labeling ice cream.
- 20-59-240. Unlawful acts — Labeling ice milk.
- 20-59-241. Unlawful acts — Labeling ice cream mix.
- 20-59-242. Unlawful acts — Bacteria count of frozen dessert.
- 20-59-243. Unlawful acts — Graded milk.
- 20-59-244. Unlawful acts — Pasteurized milk — Permit.
- 20-59-245. Unlawful acts — Name of distributor on container — Sale of misprint bottle caps.
- 20-59-246. Manufacturing milk permit.
- 20-59-247. Disposition of funds.
- 20-59-248. Incidental sales of goat milk and whole milk that has not been pasteurized not prohibited — Definitions.

Cross References. Licenses and permits, removal of disqualification for criminal offenses, § 17-1-103.

Milk, unfair practices, § 4-75-801 et seq.

Production, processing, and sale of milk regulated by municipality, § 14-54-1201 et seq.

Effective Dates. Acts 1941, No. 114, § 8: became law without Governor's signature, Mar. 4, 1941. Emergency clause provided: "Therefore, it is hereby declared to be a fact that there is an urgent demand for this law due to the wide spread insaniary conditions existing throughout the state. That the public safety, convenience, health and welfare is gravely concerned under present and existing laws. This law is necessary for the preservation of the public peace, health and safety of people throughout this state, therefore, an emergency is hereby declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1953, No. 416, § 15: effective 60 days after becoming law.

Acts 1983, No. 289, § 2: Feb. 25, 1983. Emergency clause provided: "It is hereby found and determined by the General Assembly that the statutory definition of 'whole milk' contained in subsection (1) of subheading A of Section 1 of Act 114 of 1941, as amended, does not conform to the definition of whole milk in United States Government standards, and does not conform to the standards promulgated by the Arkansas Department of Health, for whole milk, and that the immediate passage of this Act is necessary to bring the statutory definition of whole milk into compliance with United States Government regulations and Arkansas Department of Health standards. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace,

health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 534, § 4: Apr. 1, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current economic conditions, budgetary constraints may limit the ability of the Department of Health to adequately provide needed services unless some license fees are increased; that it is most equitable to make this increase effective immediately upon passage of this Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 27, § 4: Feb. 7, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the dairy industry of Arkansas is essential to the public health, safety and welfare of the people of this State, and is vital to the economy of this State; that due to changes and innovations in the dairy products industry and the development of the fast foods industry, it is essential that the State Board of Health be given the power to change and correct rules and regulations pertaining to milk, cream, and other milk products and frozen desserts, as may be necessary to correspond to and coincide with changes made in federal standards for such products, in order to enable the dairy products industry in this State to remain competitive with other states, and to assure the preservation of the safety and health of the people of this State. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-59-201. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) MILK.

(A) "Whole milk" means the lacteal secretion obtained by the complete milking of one (1) or more healthy cows, properly fed and kept, excluding that obtained within fifteen (15) days before or five (5) days after calving or such longer period as may be necessary to render

the milk practically colostrum free, and when offered for sale must contain not less than three and one-fourth percent (3¼%) of butterfat, and eight and one-fourth percent (8¼%) solids not fat;

(B) Milk for manufacturing purposes may contain less than three and one-fourth percent (3¼%) of butterfat but must be delivered pure, sweet, and clean;

(C) "Skimmed milk" means milk from which a sufficient portion of milk fat has been removed to reduce its milk fat percentage to less than three and one-fourth percent (3¼%); and

(D) "Cream" means that portion of milk rich in butterfat which rises to the surface of the milk on standing or is separated from it by centrifugal force, containing not less than eighteen percent (18%) of butterfat;

(2) DAIRY PRODUCTS. "Dairy products or milk products" means the pure, clean, and wholesome milk, cream, pure milk fat, butter, cheese, ice cream, ice cream mix, evaporated milk, skimmed milk, condensed milk, sweetened condensed milk, condensed skimmed milk, sweetened condensed skimmed milk, dried milk, dried skimmed milk, or any derivatives of milk or combination of products made from milk;

(3) CHEESE.

(A) "Cheese" means the product made from the separated curd obtained by coagulating the casein of milk, skimmed milk, or milk enriched with cream. The coagulation is accomplished by means of rennet or other suitable enzyme, lactic fermentation, or by a combination of any two (2) processes. The curd may be modified by heat, pressure, ripening ferments, special molds, or suitable seasoning. Certain varieties of cheese are made from the milk of animals other than the cow, and any cheese defined in this subchapter may contain added coloring matter. The name "cheese" unqualified means cheddar cheese, American cheese, or American cheddar cheese;

(B) "Cheddar cheese", "American cheese", or "American cheddar cheese" means the cheese made by the cheddar process from heated and pressed curd obtained by the action of rennet on milk. It contains not more than thirty-nine percent (39%) water, and in the water-free substance, not less than fifty percent (50%) of milk fat;

(C) "Skim milk cheese" means cheese made from milk, the finished product of which contains less than fifty percent (50%) of butterfat based on the moisture-free substance or contains more than thirty-nine percent (39%) moisture;

(D) "Pasteurized cheese" or "pasteurized-blended cheese" means the pasteurized product made by comminuting and mixing, with the aid of heat and water, one (1) or more lots of cheese into a homogeneous, plastic mass. The unqualified name "pasteurized cheeses" or "pasteurized-blended cheese" is understood to mean pasteurized cheddar cheese or pasteurized blended cheddar cheese and applies to a product which conforms to the standard for cheddar cheese. Pasteurized cheese or pasteurized-blended cheese, bearing a varietal name, is made from cheese of the variety indicated by the name and conforms to the limits for fat and moisture for cheese of that variety;

(E) "Process cheese" means the modified cheese made by comminuting and mixing one (1) or more lots of cheese into a homogeneous plastic mass, with the aid of heat, with or without the addition of water, and with the incorporation of not more than three percent (3%) of a suitable emulsifying agent. The name "process cheese", unqualified, is understood to mean process cheddar cheese and applies to a product which contains not more than forty percent (40%) water and, in the water-free substance, not less than fifty percent (50%) milk fat. Process cheese, qualified by a varietal name, is made from cheese of the variety indicated by the name and conforms to the limits for fat and moisture for cheese of that variety;

(F) "Casein" means that product made from skimmed milk or buttermilk obtained by precipitating the casein by the addition of acids or whey. The casein may be subsequently washed, ground, and dried; and

(G) "Whey" means the product remaining after the removal of fat and casein from milk in the process of cheese making;

(4) ICE CREAM — FROZEN DESSERTS AND DRINKS.

(A) "Frozen desserts" means ice cream, ice cream mix, frozen malted milk, frozen custard, ice milk, milk sherbets, ice or ice sherbets, and imitation ice cream as defined in this subchapter when manufactured for commercial purposes;

(B) "Ice cream" means the pure, clean, frozen product made from a combination of two (2) or more of the following ingredients: milk products, eggs, egg products, water, and sugar with harmless flavoring and with or without harmless coloring and with or without added stabilizer composed of wholesome edible material. It contains not more than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of stabilizer, not less than ten percent (10%) by weight of milk fat, and not less than eighteen percent (18%) by weight of total milk solids. However, when fruit, fruit juices, nuts, cocoa or chocolate, chocolate syrup, maple syrup, cakes or confections, or other wholesome pure food products are used for the purpose of flavoring, then it shall not contain less than ten percent (10%) by weight of milk fat and not less than eighteen percent (18%) by weight of total milk solids, except for such reduction in milk fat and in total milk solids, as is due to the addition of the flavoring. In no such case shall it contain less than eight percent (8%) by weight of milk fat nor less than fourteen percent (14%) by weight of total milk solids. In no case shall any ice cream contain less than one and six-tenths pounds (1 $\frac{6}{10}$ lbs.) of total food solids per gallon;

(C) "Ice cream mix" means a product which results from the mixture of pure clean dairy products, sugar, and other products allowed in the use of ice cream and with or without harmless flavoring and coloring. In no case shall ice cream mix contain less than ten percent (10%) by weight of milk fat and not less than eighteen percent (18%) by weight of total milk solids. When fruit, nuts, cocoa or chocolate, maple syrup, cakes, or confections are used

for the purpose of flavoring, then it shall not contain less than ten percent (10%) by weight of milk fat and not less than eighteen percent (18%) by weight of total milk solids, except for such reduction in milk fat and in total milk solids as is due to the addition of the flavoring, but in no case shall it contain less than eight percent (8%) by weight of milk fat nor less than fourteen percent (14%) by weight of total milk solids;

(D) "Frozen malted milk" means the pure, clean, semifrozen product made from the combination of milk products, malted milk, and one (1) or more of the following ingredients: eggs, sugar, dextrose, and honey, with or without flavoring and coloring and with or without edible gelatin or vegetable stabilizer, and in the manufacture of which freezing has been accompanied by agitation of the ingredients. It contains not more than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of edible gelatin or vegetable stabilizer, not less than three percent (3%) by weight of milk fat, nor more than ten percent (10%) by weight of total milk solids, and not less than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of malted milk. In no case shall frozen malted milk contain less than one and three-tenths pounds ($1 \frac{3}{10}$ lbs.) of total food solids per gallon;

(E) "Fountain malted milk" means the pure, clean, semifrozen product made from the combination of milk products, malted milk, and one (1) or more of the following ingredients: eggs, sugar, dextrose, and honey, with or without flavoring and coloring and with or without edible gelatin or vegetable stabilizer; and it contains not more than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of edible gelatin or vegetable stabilizer, not less than four percent (4%) by weight of milk fat, not less than twelve percent (12%) by weight of total milk solids, and not less than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of malted milk;

(F) "Frozen custard" means French ice cream, French custard ice cream, ice custard, parfaits, and similar frozen products. Frozen custard is a clean wholesome product made from a combination of two (2) or more of the following ingredients: milk products, eggs, water, and sugar, with harmless flavoring and with or without harmless coloring and with or without added stabilizers composed of wholesome edible material. It contains not more than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of stabilizer, not less than ten percent (10%) by weight of milk fat, and not less than fourteen percent (14%) by weight of total milk solids. Frozen custard shall contain not less than two and one-half ($2\frac{1}{2}$) dozen of clean, wholesome egg yolks, or three-fourths pounds ($\frac{3}{4}$ lbs.) of wholesome, dry egg yolk containing not to exceed seven percent (7%) of moisture, or one and one-half pounds ($1\frac{1}{2}$ lbs.) of wholesome frozen egg yolk containing not to exceed fifty-five percent (55%) of moisture, or the equivalent of egg yolk in any other form, for each ninety pounds (90 lbs.) of frozen custard. In no case shall any frozen custard contain less than one and six-tenths pounds ($1 \frac{6}{10}$ lbs.) of total food solids per gallon;

(G) "Ice milk" means the pure, clean, frozen product made from a combination of two (2) or more of the following ingredients: milk products, eggs, water, and sugar, with harmless flavoring and with or without added stabilizer composed of wholesome, edible material, and with or without harmless coloring. It contains not more than one-half of one percent ($\frac{1}{2}$ of 1%) by weight of stabilizers, not less than three percent (3%) and not more than ten percent (10%) by weight of milk fat and not less than fourteen percent (14%) by weight of total milk solids. In no case shall any ice milk contain less than one and three-tenths pounds ($1 \frac{3}{10}$ lbs.) of total food solids per gallon;

(H) "Milk sherbet" means the pure, clean, frozen product made from milk products, water, and sugar, with harmless fruit, fruit acid, or fruit juice flavoring, and with or without harmless coloring, and with not less than thirty-five hundredths of one percent ($35/100$ of 1%) of acid as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome, edible material. It contains not less than four percent (4%) by weight of milk solids;

(I) "Ice or ice sherbet" means the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring and with or without milk products and with not less than thirty-five hundredths of one percent ($35/100$ of 1%) of acid as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome, edible material. It contains less than four percent (4%) by weight of milk solids; and

(J) "Imitation ice cream" means any frozen substance, mixture, or compound, regardless of the name under which it is represented, which is made in imitation or semblance of ice cream or is prepared or frozen as ice cream is customarily prepared or frozen, and which is not ice cream, frozen custard, ice milk, frozen malted milk, sherbet, or ice as defined in this law. No person shall sell imitation ice cream. However, "mellorine" and "mellorine mix" defined in subdivision (4)(J)(i)(a) of this section shall not be construed to be "imitation ice cream", and nothing in this subchapter shall be construed to prevent or prohibit the manufacture or sale of "mellorine" and "mellorine mix" as defined:

(i)(a) DESCRIPTION.

(1) Mellorine is a food produced by freezing, while stirring, a pasteurized mix consisting of safe and suitable ingredients, including, but not limited to, milk-derived nonfat solids and animal or vegetable fat, or both, only part of which may be milk fat. Mellorine is sweetened with nutritive carbohydrate sweetener and is characterized by the addition of flavoring ingredients. Mellorine mix is a mix composed of the ingredients which are frozen to produce mellorine;

(2) Mellorine contains not less than one and six-tenths pounds ($1 \frac{6}{10}$ lbs.) of total solids to the gallon, and weighs not less than four

and one-half pounds ($4\frac{1}{2}$ lbs.) to the gallon. Mellorine mix contains not less than three and two-tenths pounds ($3\frac{2}{10}$ lbs.) of total food solids and shall weigh not less than nine pounds (9 lbs.) per gallon. Mellorine or mellorine mix contains not less than six percent (6%) fat and two and seven-tenths percent ($2\frac{7}{10}\%$) protein having a protein efficiency ratio (PER) not less than that of whole milk protein (one hundred eight percent (108%) of casein) by weight of the food, exclusive of the weight of any bulky flavoring ingredients used. In no case shall the fat content of the finished food be less than four and eight-tenths percent ($4\frac{8}{10}\%$) or the protein content be less than two and two-tenths percent ($2\frac{2}{10}\%$). The protein to meet the minimum protein requirements shall be provided by milk solids, not fat or other milk-derived ingredients; and

(3) When calculating the minimum amount of fat and protein required in the finished food, the solids of chocolate or cocoa used shall be considered a bulky flavoring ingredient. In order to make allowance for additional sweetening ingredients needed when certain bulky ingredients are used, the weight of chocolate or cocoa solids used may be multiplied by two and one-half ($2\frac{1}{2}$); the weight of fruit or nuts used may be multiplied by one and four-tenths ($1\frac{4}{10}$); and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight may be multiplied by one and four-tenths ($1\frac{4}{10}$);

(b) FORTIFICATION. Vitamin A is present in a quantity which will ensure that forty international units (40 IU) are available for each gram of fat in mellorine or mellorine mix within limits of good manufacturing practice;

(c) METHODS OF ANALYSIS. Fat and protein content and the protein efficiency ratio shall be determined by the following methods contained in the latest edition of Official Methods of Analysis of AOAC International:

(1) Fat content shall be determined by either the Babcock method or such method of testing as may be approved by the AOAC International or the American Dairy Science Association;

(2) Protein content shall be determined by one (1) of the following methods: "Nitrogen — Official Final Action", Kjeldahl Method, Section 16.226, or Dye Binding Method, Section 16.227; and

(3) Protein efficiency ratio shall be determined by this method: "Biological Evaluation of Protein Quality — Official Final Action" Sections 39.166 — 39.170;

(d) NOMENCLATURE. The name of the food is "mellorine". The name of the mix which is frozen to produce mellorine is "mellorine mix". The name of the food or mix on the label shall be accompanied by a declaration indicating the presence of characterizing flavoring; and

(e) LABEL DECLARATION. The common or usual name of each of the ingredients used shall be declared on the label, except that sources of milk fat or milk solids not fat may be declared, in descending order of

predominance, either by the use of the term "milk fat" or "nonfat milk";

(ii) For the purpose of this definition and standard of identity, food fats are edible natural fats derived from vegetable sources including only such milk fat as is normally contained in the products enumerated in subdivision (4)(J)(iii) of this section. Harmless optional ingredients may be used to prevent fat oxidation in an amount not exceeding five one-thousandths of one percent (5/1000 of 1%) of the weight of the fat used. No edible vegetable oil shall be used which does not meet the standards prescribed by the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301;

(iii) "Milk solids not fat" shall mean and include skim milk, evaporated or condensed concentrated skim milk, superheated condensed skim milk, sweetened condensed skim milk, nonfat dry milk solids, edible dry whey, cheese whey, sweet cream buttermilk, whether fluid, condensed, or dried, and any of the foregoing products from which all or a portion of the lactose has been removed after crystallization or the lactose has been converted to simple sugars by hydrolysis;

(iv) "Sugar" or "other sweeteners" shall mean and include sugar, liquid sugar, dextrose, which is paste or syrup, invert sugar, lactose, corn sugar, dried or liquid corn syrup, maple sugar, honey, brown sugar, malt syrup, dried malt extract, and molasses, other than blackstrap;

(v) "Flavors" shall mean and include:

(a) Natural food flavoring;

(b) Artificial food flavoring;

(c) Fruit juice, which may be sweetened and thickened with stabilizer;

(d) Chocolate;

(e) Cocoa;

(f) Fruit which may be fresh, frozen, canned, concentrated, shredded, pureed, comminuted, or dried and which may be sweetened, thickened with stabilizer, and may be acidulated with citric, tartaric, malic, lactic, or ascorbic acid;

(g) Nut meats; and

(h) Confectionery; and

(vi) "Stabilizers" shall mean and include gelatins, algin, extractive of Irish moss, psyllium seed husk, agar-agar, gum acacia, gum karaya, locust bean gum, gum tragacanth, cellulose gum, guar seed, gum, monoglycerides, or diglycerides, both of fat-forming fatty acids or other harmless stabilizer or emulsifier;

(5) MISCELLANEOUS PRODUCTS. Varieties, types, and kinds of milk and dairy products which are not defined in this section shall be manufactured and marketed under the standards of composition promulgated by the Bureau of Standards of the United States Food and Drug Administration, or may be promulgated by the Director of the Department of Health under authority vested in him or her to make and promulgate rules and regulations;

(6) PASTEURIZATION. "Pasteurization" is defined to mean the heating of every particle of the milk, cream, ice cream mix, or milk products used in the manufacture of ice cream or butter to a temperature of at least one hundred forty-five degrees Fahrenheit (145° F) and held at the temperature for thirty (30) minutes, provided that any other method of pasteurization which has been proved of equal value may be used when approved by the American Dairy Science Association. Frozen dessert pasteurization vats shall be provided with recording thermometers and charts filed for record;

(7) CONDENSED OR EVAPORATED MILK.

(A) "Condensed milk", "evaporated milk", or "concentrated milk" is that product resulting from the evaporation of a considerable portion of the water from whole, fresh, clean milk, and contains, all tolerances being allowed for, not less than twenty-five and one-half percent (25 ½%) of total solids and not less than seven and nine-tenths percent (7 9/10%) of milk fat;

(B) "Sweetened condensed milk", "sweetened evaporated milk", or "sweetened concentrated milk" is the product resulting from the evaporation of a considerable portion of the water from whole, fresh, clean milk, to which sugar or sucrose has been added. It contains, all tolerances being allowed for, not less than twenty-eight percent (28%) of total milk solids and not less than eight percent (8%) of milk fat;

(C) "Condensed skimmed milk", "evaporated skimmed milk", or "concentrated skimmed milk" is the product resulting from the evaporation of a considerable portion of the water from skimmed milk which contains, all tolerances being allowed for, not less than twenty percent (20%) of milk solids; and

(D) "Sweetened condensed skimmed milk", "sweetened evaporated skimmed milk", or "sweetened concentrated skimmed milk" is the product resulting from the evaporation of a considerable portion of the water from skimmed milk to which sugar or sucrose has been added. It contains, all tolerances being allowed for, not less than twenty-eight percent (28%) of milk solids;

(8) BUTTER.

(A) "Butter" is the food product usually known as "butter", and which is made exclusively from milk or cream, or both, with or without common salt and with or without additional coloring matter, to contain not less than eighty percent (80%) by weight of milk fat, all tolerances being allowed for;

(B)(i) "Renovated or process butter" is the product made by melting butter and reworking the butter, without the addition or use of chemicals or any substances except milk, cream, or salt, that contains not less than eighty percent (80%) butterfat or that is made in accordance with current standards established by the United States Food and Drug Administration.

(ii) Renovated or process butter may also contain harmless coloring matter.

(iii)(a) The amount of butterfat in the product of any manufacturer, or in any given quantity of butter or renovated or process

butter shall be determined by taking three (3) samples from three (3) different packages of the manufacturer or from any one (1) tub or churning of butter and a careful analysis made by the official method adopted by the AOAC International.

(b) If this analysis shows less than eighty percent (80%) butterfat, the butter or renovated or process butter that was analyzed is deemed adulterated butter, and the manufacturer, upon conviction, is guilty of a Class A misdemeanor.

(c) Butter or renovated or process butter that is deemed adulterated butter shall be melted and reworked before being offered for sale;

(9) CREAM.

(A) "Sour cream" is cream, the acidity of which is more than two-tenths of one percent (2/10 of 1%), expressed as lactic acid;

(B) "Sweet cream" when bought and sold for butter manufacturing purposes only, on a butterfat basis, shall consist of fresh, clean, fine-flavored cream, the acidity of which does not exceed two-tenths of one percent (2/10 of 1%) calculated as lactic acid;

(C) "First grade cream" when bought and sold for butter manufacturing purposes only, on a butterfat basis, shall consist of cream that is smooth, clean, free from undesirable odors and flavors, and shall contain not less than twenty-five percent (25%) of butterfat;

(D) "Second grade cream" when bought and sold for butter manufacturing purposes only, on a butterfat basis, shall consist of cream that is too old to grade as "first grade" and may contain objectionable flavors and odors in a moderate degree; and

(E) "Unlawful cream or milk" means cream or milk which contains dirt, filth, gasoline, kerosene, or other foreign matter, or which has been contaminated by insects, rodents, or other animals or that is stale, cheesy, rancid, putrid, decomposed, or is otherwise unfit for human consumption; and

(10) MISCELLANEOUS DEFINITIONS.

(A) "Dairy products plants" shall include all places where dairy products, as defined in this subchapter, are bottled, processed, frozen, or manufactured;

(B) "Milk or cream station" shall be considered to mean any place where milk or cream may be received or purchased and held for shipment or delivery to a dairy products plant;

(C) "Truck route" shall be considered to mean any person, as defined in subdivision (10)(G) of this section, collecting cream or milk from the producer for the purpose of manufacture into butter, cheese, ice cream, condensed or powdered milk, or for bottled purposes;

(D) "Field superintendent" shall be considered to mean any qualified person who is the authorized representative of any person, firm, company, or corporation engaged in buying, selling, or manufacturing dairy products and who has supervision over the procurement of raw materials to be manufactured into dairy products;

(E) "Station operator" shall be considered to mean any person who performs the act of sampling or testing milk, cream, or other dairy

products, the test of which is to be used as a basis for making payment for the products;

(F) “Cream or milk grader” shall be considered to mean any person who shall have passed a satisfactory examination as to his or her qualifications and to have actually demonstrated his or her ability before the director or his or her assistants, to determine the quality of cream or milk purchased for the purpose of manufacture into dairy products; and

(G) The term “person” shall be considered to include an individual, or a partnership, corporation, or association.

History. Acts 1941, No. 114, § 1; 1953, No. 416, § 1; 1979, No. 521, § 1; 1983, No. 289, § 1; A.S.A. 1947, § 82-912; Acts 2015, No. 1157, § 7.

Amendments. The 2015 amendment redesignated former language of (8)(B) as (8)(B)(i), transferred a former undesignated sentence at the end of (8)(B) to become (8)(B)(ii), and redesignated the remainder of (8)(B) as (8)(B)(iii)(a) through (c); and made technical corrections, including: in (8)(B)(i), inserted “the butter” following “reworking” and substituted “current standards established by the United States Food and Drug Admin-

istration” for “such standards as shall be established by the Food and Drug Administration”; in (8)(B)(iii)(a), deleted “one (1)” preceding “manufacturer”, substituted “or renovated or” for “renovated, or”, and substituted “the manufacturer” for “any one (1) manufacturer”; in (8)(B)(iii)(b), inserted “renovated or” and substituted “upon conviction, is guilty of a Class A misdemeanor” for “shall be deemed guilty of a misdemeanor”; and, in (8)(B)(iii)(c), substituted “Butter or renovated or process butter that is deemed adulterated butter” for “butter” and inserted “melted and” preceding “reworked”.

20-59-202. Penalties.

Any person, firm, or corporation shall be guilty of a violation and shall be fined a sum not less than twenty-five dollars (\$25.00) nor more than three hundred dollars (\$300) if that person, firm, or corporation shall:

(1) Hinder, obstruct, or in any way interfere with the Director of the Department of Health or his or her deputies while discharging the duties of inspection;

(2) Obstruct or hinder in any way the director from carrying out the full meaning and intent of this subchapter;

(3) Refuse or fail to make the reports provided for by §§ 20-59-206 — 20-59-211 and 20-59-214 — 20-59-246;

(4) Refuse or neglect to conform to the rules and regulations of the Department of Health that have been published as provided in this subchapter regarding the care or condition of any animal kept for dairy purposes or for the sanitary conditions of any room, building, or place where dairy products are kept either for storage or for the purpose of sale and distribution; or

(5) Sell, exhibit, or offer for sale any dairy product that is adulterated.

History. Acts 1941, No. 114, § 5; A.S.A. 1947, § 82-916; Acts 2005, No. 1994, § 133.

20-59-203. Prosecutions.

All prosecutions brought for violations of the provisions of this subchapter shall be brought in any court having competent jurisdiction, and it shall be the duty of all prosecuting attorneys in whose county any violations may occur to attend and prosecute those cases, and for so doing they shall be entitled to the same fees as are now provided for like service in the same court.

History. Acts 1941, No. 114, § 7; A.S.A. 1947, § 82-918.

CASE NOTES**Abatement of Nuisance.**

The fact that an act constitutes a nuisance and is also a crime does not deprive the court of equity jurisdiction to abate

the nuisance when the public health and welfare is in danger. *State ex rel. Hale v. Lawson*, 212 Ark. 233, 205 S.W.2d 204 (1947).

20-59-204. State Board of Health — Appointment of deputies — Regulations and standards.

(a)(1) The State Board of Health is authorized and empowered to appoint such deputies and office assistants as in its judgment may be deemed necessary to fully carry out the provisions of this subchapter.

(2) The board is authorized and empowered to fix their compensation and to have full and complete control and supervision over them.

(b) The board is further authorized, when not inconsistent with this subchapter, to formulate and prescribe such reasonable rules and regulations and define and establish standards for dairy products included in this subchapter as may be deemed necessary to accomplish the purpose of this subchapter.

History. Acts 1941, No. 114, § 6; A.S.A. 1947, § 82-917.

CASE NOTES**Regulations.**

The legislature may delegate authority to a state board to promulgate reasonable

regulations designed to protect the public health. *State ex rel. Hale v. Lawson*, 212 Ark. 233, 205 S.W.2d 204 (1947).

20-59-205. Right of review — Definition.

(a) It shall be the duty of the State Board of Health, and it is authorized and empowered through its constituted officers and agents as set out in this section, to perform the following acts. However, any aggrieved party shall have the right to apply to the circuit court in the county of his or her residence for a review of any summary action on the part of the board or its agents and for this purpose service of process upon the Director of the Department of Health at any place in this state shall constitute valid service in the application for review:

(1) **INSPECTION OF PLANTS.** To inspect or cause to be inspected, as often as may be deemed practicable, all dairy products plants or any other places where dairy products are produced, manufactured, frozen, processed, kept, handled, stored, or sold within this state;

(2) **PRODUCTION AND SALE PROHIBITED.** To prohibit the production and sale of unclean, adulterated, unwholesome milk, cream, or other dairy products;

(3) **CONDEMNATION FOR FOOD.** To condemn for food purposes by denaturing with harmless coloring all unclean or unwholesome dairy products wherever they may find those products;

(4) **SAMPLES.** To take samples anywhere of any dairy products or imitation thereof and cause the samples to be analyzed or satisfactorily tested according to the method of the AOAC International in force at the time. The analyses or tests shall be preserved and recorded;

(5) **RIGHT OF ENTRY.** To enter during business hours all dairy products plants or other places where dairy products are manufactured, produced, frozen, processed, stored, sold, or kept for sale or transportation in order to perform their official duties;

(6) **PRICE OF CREAM OR BUTTERFAT.**

(A) To require that no person, firm, corporation, or association shall buy or offer to buy cream or butterfat for butter-making purposes without displaying the price to be paid for cream or butterfat according to grade of cream.

(B) The price shall be posted and displayed continuously during the business hours of the person, firm, or corporation buying cream, and the price, according to grade of cream, shall include all premiums and bonuses, if any, in letters and figures not less than two inches (2") in height in such manner or place so that the price posted shall be plainly visible from the street in front of the building or place in which the purchase is made.

(C) It shall be deemed a violation hereof if there is:

(i) A failure on the part of the person, firm, corporation, or association, its agent, servant, or employee, to post the prices; or

(ii) A buying of cream or butterfat at a price different from that which is posted.

(D) All persons, firms, corporations, or associations, their agents, servants, or employees shall keep a record in their respective cream stations of the time and date on or at which changes in prices are made and posted.

(E) However, nothing in this subdivision (6) shall be construed as to forbid or prevent:

(i) Incorporated cooperative associations from paying annually earned patronage dividends according to the statutes and decrees under which they are organized; or

(ii) Corporations paying annual dividends according to the statutes and decrees under which they are incorporated;

(7) **SUBPOENAS.**

(A) To issue subpoenas requiring the appearance of witnesses and the production of books, papers, reports, and records before the board

or the Director of the Department of Health, in all cases where sufficient evidence of violation of this subchapter is filed with the Director of the Department of Health. The Director of the Department of Health shall have power to administer oaths with like effect as is done in courts of law in this state.

(B) It shall be the duty of any circuit court or the judge thereof upon application to issue an attachment for the witnesses and compel their attendance before the board or the Director of the Department of Health, to give testimony upon such matters as shall be lawfully required by the official. The court or judge shall have power, in cases of refusal, to punish for contempt, as in other cases of refusal to obey the orders and process of the court;

(8) TESTS.

(A) To test milk, cream, and other dairy products for the purpose of ascertaining the percentages of butterfat or other ingredients contained therein.

(B) If the Director of the Department of Health or any of his or her deputies shall find upon testing that there is a variance of more than one percent (1%) of butterfat in a cream test or two-tenths of one percent ($2/10$ of 1%) in a milk test between his or her test and that made by any person engaged in buying or selling milk, cream, or other dairy products for the basis of payment, the Director of the Department of Health or deputy shall cause his or her test to be verified and substantiated by a recognized laboratory. If the chemist shall find that the test made by the Director of the Department of Health or deputy is correct, the test thus made and verified shall be admitted in evidence in all prosecutions for violation of this section. The Director of the Department of Health is authorized to recall and cancel the testor's permit of the person thus making false tests or to bring criminal action against the person, or both;

(9) CARRIER REGULATIONS.

(A) To forbid and prevent any common carrier to neglect or fail to remove or ship from its depot, within twenty-four (24) hours of its arrival there for shipment, any milk, cream, or other dairy products left at that depot for transportation.

(B) Railway and express companies and other common carriers shall provide and utilize sanitary ventilated rooms or canvas covers at depots or transfer points for the protection from extreme temperatures of all milk, cream, and ice cream received for shipment and not allow merchandise of a contaminating nature to be stored on or with the cream.

(C) Truck route operators shall protect milk and cream from extreme temperatures and unsanitary conditions during transportation by proper covering and separation to prevent contamination from other transportation products;

(10) CANS OR PACKERS AT DEPOT. To forbid and prevent milk or cream cans or ice cream packers to remain at a railroad or truck depot longer than forty-eight (48) hours from the date of their arrival, excepting individual farm shipments;

(11) **BRANDED CONTAINERS.**

(A) To forbid and prevent the use of any branded or registered cream can or milk can, ice cream, or frozen dessert packer or container for any other purpose than the handling, storing, or shipping of milk, cream, or frozen dessert.

(B) It shall be unlawful for any person or carrier other than the rightful owner, except with written consent of the owner thereof, to use, transport, or deliver any milk or cream can, whether filled with cream or milk or empty, or frozen dessert container, whether filled with frozen dessert or empty, to other than the rightful owner if the receptacle is marked with the brand or trademark of the owner, the brand or trademark being registered according to law with the Secretary of State;

(12) **ALTERATION OF BRAND — RETURN OF CONTAINERS.**

(A) To forbid and prevent any person other than the rightful owner thereof to in any way alter the mark or brand or ownership identification on any milk or cream can or other dairy receptacle without written consent of the owner.

(B) Every person, firm, or corporation purchasing frozen desserts in cans and shipping bags which are to be returned to the manufacturer shall cause the cans to be washed and cleaned as soon as emptied, and the bags stored in a dry place, or returned at once;

(13) **SAMPLES OF FROZEN DESSERTS.** To take samples of frozen desserts, ice cream, or other frozen dairy products for official testing at the factory where desserts are frozen or from an unopened container of frozen desserts or other frozen dairy products, according to a method approved by the AOAC International or the American Dairy Science Association;

(14) **CONTAINERS USED FOR OTHER PURPOSES.** To forbid and prevent the sale or storage of milk, cream, or other dairy products in milk or cream cans which have previously contained kerosene, gasoline, turpentine, oil, or products or byproducts of a similar nature; and

(15) **DAIRY PRODUCT DEFINITIONS AND STANDARDS OF IDENTITY AND LABELING REQUIREMENTS.**

(A) To adopt the definitions and standards of identity for milk, milk products, cheeses, and frozen desserts found at 21 C.F.R., Parts 131, 133, and 135, and to adopt any amendments or additions made thereunder. The board may adopt definitions and standards of identity of milk products, cheeses, and frozen desserts if they are not found at 21 C.F.R. All packages enclosing milk, milk products, cheeses, and frozen desserts shall be labeled in accordance with the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, and regulations promulgated thereunder.

(B) Provided, that the board shall not change, correct, adopt, or promulgate rules or regulations or other health code standards pertaining to the dairy industry of Arkansas, as defined in this section, until such changes have been reviewed by active Arkansas milk producers marketing agents, herein referred to as the "agents",

and by the Arkansas Dairy Products Association, hereinafter referred to as the "association", in regular or especially called meetings of the agents and the association, or the governing bodies thereof. However, if meetings of the agents and the association are not held within thirty (30) days after a written notice by the board of intent to change, correct, adopt, or promulgate rules and regulations, the review of the agents and the association shall be deemed waived.

(C) Notice as required by this subsection shall be given in writing by ordinary mail, or be hand delivered, to the agents and to the Director of the Arkansas Dairy Products Association.

(D) The Director of the Department of Health or the board may change, correct, adopt, or promulgate rules and regulations pertaining to the dairy industry of Arkansas in times of emergency or natural disaster without notice to the agents and the association.

(E) As used in this subchapter, the term "dairy industry of Arkansas" means Grade "A" milk plants, milk manufacturing plants, ice cream plants, milk producers, milk producer-distributors, milk haulers, milk distributors, dairy farms, receiving stations, and transfer stations.

(b) Nothing in this subchapter shall be construed to deprive any city of the first class or city of the second class of any of its police powers now or hereafter granted.

(c) Nothing in this section or in any other section of this subchapter shall be construed as authorizing or directing in any fashion the board to assume, to take over, or to discharge exclusively any of the functions and duties or responsibilities customarily performed by cities of the first class or cities of the second class, operating under and enforcing an ordinance approved by the Department of Health dealing with dairy or other sanitary milk inspection work or the bacteriological sampling of milk.

(d) The duties discharged under the terms of this subchapter shall be discharged insofar as is practicable and reasonable in cooperation with the municipal authorities wherever such authorities exist.

History. Acts 1941, No. 114, § 2; A.S.A. 1947, § 82-913; Acts 1989, No. 27, § 1.

U.S. Code. The Federal Food, Drug, and Cosmetic Act, referred to in this section, is codified as 21 U.S.C. § 301 et seq.

The Fair Packaging and Labeling Act, referred to in this section, is codified as 15 U.S.C. § 1451 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Administrative Law in Arkansas, 4 Ark. L. Rev. 107.

CASE NOTES

Municipal Regulation.

The provision of subdivision (a)(15) [see now (b)] permitting cities to make regula-

tions does not deprive the State Board of Health of authority in cities which have regulations, such provision authorizing

the city to supplement but not supplant
the efforts of the State Board of Health to
protect the public health. State ex rel.

Hale v. Lawson, 212 Ark. 233, 205 S.W.2d
204 (1947).

20-59-206. Dairy plant license.

(a) A dairy products plant manufacturing, processing, or packaging any dairy products other than those listed in § 20-59-207 as frozen desserts shall be required to have a dairy plant license.

(b) Every person buying or receiving milk, cream, or dairy products for manufacturing, processing, or packaging shall be required to procure from the Director of the Department of Health an annual dairy plant license for each location where milk, cream, or dairy products are received for the purpose of manufacturing, processing, or packaging.

(c) License fees for plant licenses shall be as follows:

(1) For a plant purchasing fluid milk, the fee shall be based on the pounds of fluid milk received the previous year:

Up to and including 5,000,000 lbs. milk	\$ 100.00
5,000,001 — 15,000,000 lbs.	200.00
15,000,001 — 25,000,000 lbs.	400.00
25,000,001 — 40,000,000 lbs.	600.00
40,000,001 — 60,000,000 lbs.	800.00
60,000,001 lbs. and up	1,000.00

(2) For a plant receiving cream, the fee shall be based on pounds of butterfat received the previous fiscal year:

Up to and including 200,000 lbs. butterfat	\$ 100.00
200,001 — 400,000 lbs.	200.00
400,001 — 600,000 lbs.	400.00
600,001 — 1,000,000 lbs.	600.00
1,000,001 lbs. and up	800.00

History. Acts 1941, No. 114, § 4; 1973,
No. 98, § 2: A.S.A. 1947, § 82-915; Acts
1987, No. 534, § 1; 1991, No. 328, § 1.

20-59-207. Frozen dessert manufacturer’s license.

(a) For purposes of licensing, a dairy plant manufacturing or packaging frozen dessert such as ice cream, ice cream mix, ice milk, ice milk mix, frozen malted milk, frozen custard, ice or ice sherbets, and novelties shall be licensed as a frozen dessert manufacturer.

(b) Any person making frozen dessert for sale shall be required to procure from the Director of the Department of Health an annual frozen dessert manufacturer’s license for each location or plant where frozen dessert is manufactured.

(c) License fees for frozen dessert manufacturers’ licenses shall be based on the gallons of mix or the finished products manufactured or sold the previous year. License fees shall be based on previous year’s production:

Up to and including 10,000 gallons	\$ 60.00
10,001 — 20,000 gallons	100.00
20,001 — 100,000 gallons	200.00
100,001 — 350,000 gallons	400.00
350,001 — 500,000 gallons	600.00
500,001 — 750,000 gallons	800.00
750,001 — 1,000,000 gallons	1,000.00
1,000,001 gallons and up	1,200.00

History. Acts 1941, No. 114, § 4; 1973, No. 98, 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1; 1991, No. 328, § 2.

20-59-208. Receiving or transfer plant license.

(a) Any plant where fluid milk or cream not in consumer packages is received on consignment or otherwise, stored, or transported but where packaging, processing, or manufacturing does not occur shall be required to have an annual receiving or transfer plant license for each location or plant where milk or cream is received.

(b) License fees for receiving or transfer plant licenses shall be as follows:

(1) The license fee for a receiving or transfer plant receiving fluid milk shall be one-half ($\frac{1}{2}$) the fee based on the schedule under § 20-59-206(c)(1);

(2) The license fee for a receiving or transfer plant receiving cream shall be one-half ($\frac{1}{2}$) the fee based on the schedule under § 20-59-206(c)(2); and

(3) If a receiving or transfer plant receives both fluid milk and cream, the license fee shall be one-half ($\frac{1}{2}$) the fee based on a combination of schedules under § 20-59-206(c).

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1.

20-59-209. Mellorine manufacturer's license.

(a) For a mellorine plant making, processing, manufacturing, freezing, or packaging mellorine or mellorine mix, the method for determining the license fee for a mellorine manufacturer's license shall be based on the gallons of mix or the finished products manufactured or sold the previous year.

(b) License fees shall be based on the previous year's production:

Up to and including 10,000 gallons	\$ 60.00
10,001 — 20,000 gallons	100.00
20,001 — 100,000 gallons	200.00
100,001 — 350,000 gallons	400.00
350,001 — 500,000 gallons	600.00

500,001 — 750,000 gallons	800.00
750,001 — 1,000,000 gallons	1,000.00
1,000,001 gallons and up	1,200.00

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1; 1991, No. 328, § 3.

20-59-210. Sampler and grader license.

- (a) Every person receiving or buying milk or cream on the basis of its chemical or physical constituents shall be, or have in his or her employ, in or on each milk transport tank truck, a licensed milk sampler and grader.
- (b) Applications to become a licensed sampler and grader shall be made to the Director of the Department of Health upon such forms as he or she may prescribe.
- (c) An annual license fee of ten dollars (\$10.00) shall be required of each person who qualifies for a license.
- (d) The license shall expire on April 1 of each succeeding year.
- (e) In order to qualify for a license, the applicant shall satisfy the director, either by a written examination or otherwise, that he or she is honest and competent to do sampling work.
- (f) An identification card stating his or her name and address and bearing the same number as his or her license shall be issued to him or her at the time his or her license is issued and shall be carried on his or her person at all times while on duty.

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1.

20-59-211. Milk tester license and fee.

- (a) Every person receiving or buying milk or cream on the basis of its chemical or physical constituents shall be, or have in his or her employ, a licensed milk tester to make the official analysis, and no other person shall be allowed to make the tests in any creamery, cheese factory, milk depot, milk plant, ice cream factory, milk condensery, or similar plant where milk or cream is bought or received on a basis of its chemical or physical constituents.
- (b) Application to become a licensed milk tester shall be made to the Director of the Department of Health upon such forms as the director may prescribe.
- (c) All licenses shall expire on the next succeeding April 1, and the fee shall be ten dollars (\$10.00). The required fee shall accompany the application.
- (d) If the applicant shall be found upon examination to be qualified and competent, the director shall issue to him or her a license.

(e) Licensed testers are also qualified and permitted to act as samplers.

History. Acts 1941, No. 114, § 4; 1973, No. 98, § 2; A.S.A. 1947, § 82-915; Acts 1987, No. 534, § 1.

20-59-212. Plant permits — Cancellation, withdrawal, and suspension.

(a) Permits to operate milk, ice cream, and dairy product plants, as defined in §§ 20-59-206 — 20-59-211, shall be issued for one (1) year and shall be cancelled, withdrawn, or suspended by the State Board of Health for failure to comply with any of the provisions of this subchapter after due notice in writing has been given and the licensee has been granted a hearing.

(b) Any licensee whose permit shall have been cancelled, withdrawn, or suspended as provided in subsection (a) of this section shall have the right of appeal from the action of the board to the circuit court of the county of his or her residence.

History. Acts 1973, No. 98, § 1; A.S.A. 1947, § 82-915.1.

20-59-213. Dairy products from another state.

(a) It is required that all dairy products as defined by § 20-59-201(2) shipped into this state from another state shall meet the sanitary standards, definitions, and requirements of Arkansas law and the rules and regulations promulgated by the State Board of Health.

(b) The board is authorized to establish acceptable reciprocal inspection authorities, interstate and intrastate, to properly enforce and administer this section in accordance with specifications and regulations adopted.

(c) A reasonable fee to be determined by the board shall be charged for all out-of-state inspections where reciprocal inspections are not available and cannot be negotiated.

History. Acts 1973, No. 70, § 1; A.S.A. 1947, § 82-912.1.

20-59-214. Unlawful acts — Insanitary plants.

It shall be unlawful to handle, process, freeze, or manufacture milk and dairy products except in sanitary dairy products plants and under sanitary conditions. Any dairy product plant in which dairy products of any kind are manufactured or any store or salesroom, excepting a store or salesroom where milk or milk products are sold at retail in final packaged form, depot, or other place where milk or any product of milk is handled or kept for sale shall be sanitary. Dairy products plants shall be considered insanitary:

(1) When milk, cream, or any product of either is received, purchased, or sold that does not meet the sanitary requirements set forth in this subchapter;

(2) When the utensils or apparatus that come in contact with milk or its products are not surfaced with glass, stoneware, glazed metal, tin, or other noncorrodible material and are not taken apart and thoroughly washed and sterilized by means of boiling water or super-heated steam or other means equally effective as proved by AOAC International or the American Dairy Science Association. This must be done immediately following the completion of any processing operation or immediately following continued processing operations, and the utensils or apparatus must be suitably stored while not in use in such manner as to prevent contamination and sterilized upon reassembling just before the next day's operations. A plant shall also be considered insanitary if the cans or containers in which the milk, cream, or products of either are received, transported, or delivered are not thoroughly washed after emptying and before being sent out to be used again, or if any containers, utensils, apparatus, or equipment is used for any purpose other than that of handling milk and the products of milk. The transportation of dairy products not intended for human consumption in cans or containers used in the delivery of other milk products is expressly prohibited;

(3) When the floor is not constructed of or covered with nonabsorbent material or if the floor is so constructed as to permit the flowing of water, milk, or other liquids underneath or among the interstices of the floor, where fermentation and decay can take place or if the floor cannot be readily kept free from dirt and properly drained;

(4) When floor drains are not provided that will convey refuse milk, water, and sewage away to a point at least fifty (50) yards distant from the creamery or factory of dairy products or if any cesspool, privy vault, hog yard, slaughterhouse, manure, or any decaying vegetable or animal matter shall be so located as to permit foul odors to reach the creamery or other factory of dairy products or storeroom or depot where milk or its products are sold or handled or if the creamery or factory of dairy products is not adequately and conveniently supplied with water free of pollution with sewage or contamination with pathogenic bacteria unless the water is subjected to efficient chlorination or otherwise treated to make it safe for use in connection with the manufacture of food products. This subdivision (4) shall not apply to cream stations as regards floor drains. However, it shall apply to cream stations in every other particular;

(5) When the creamery or factory of dairy products does not permit access of light and air sufficient to secure good ventilation;

(6) When any dairy products plant is not separated by solid partitions from living quarters or toilet facilities, except that a self-closing door may be used between living quarters and the dairy products plant and a vestibule may be used to connect toilet facilities;

(7) When all openings to the outer air are not provided with screens or other effective means so as to exclude flies and insects;

(8) When upon the floor or walls any milk or its products or any filth is allowed to accumulate or ferment, decay, or if the bodies or wearing apparel of persons employed, or coming in contact with any dairy products in a dairy products plant are unclean and not washed from time to time with reasonable frequency, and persons have a communicable disease, or if suitable toilet and lavatory facilities and clean towels are not provided for employees;

(9) When tight, sound, and cleanable walls and ceilings are not provided; or

(10) When supplies such as parchment paper, cartons, paper cans and bottles, fruits, nuts, egg products, flavoring, coloring, sugar, stabilizers, salt, and other materials and supplies used in the manufacture and packaging of dairy products are not stored, kept, and handled in such a way as to be free from contamination.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-215. Unlawful acts — False tests.

It shall be unlawful, in determining the value of milk, cream, or other dairy products by the use of the Babcock test, to give any false reading or in any way manipulate the test so as to give a higher or lower percent of butterfat than the milk, cream, or other dairy products actually contain, or to cause any inaccuracy in reading the percent of butterfat by securing from any quantity of milk, cream, or other dairy products to be tested an inaccurate sample for the test. The result of a test reported to the producer for the basis of the payment must be the same as the laboratory record of the test, all records to be in indelible pencil or ink and filed for a period of at least sixty (60) days. All samples of milk or cream, tests of which are to be used as a basis of payment, shall be kept in a cool place in tightly stoppered or tightly covered jars for at least twenty-four (24) hours after the test of the samples has been completed. Where Sundays and holidays intervene, samples shall be held for forty-eight (48) hours after completing the tests. Samples of whole milk shall be treated with proper preservatives to ensure accuracy of the test. Samples of milk for testing shall not be gathered over a period of more than sixteen (16) days, and the samples of milk shall be tested immediately after the period of gathering the samples.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-216. Unlawful acts — Improper method of testing.

It shall be unlawful to use other than the Babcock method or such method of testing as may be approved by AOAC International or the American Dairy Science Association when testing milk or cream, the test of which is to be used as a basis for making payment for the milk or cream thus tested.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-217. Unlawful acts — Improper scales.

It shall be unlawful to use other than torsion balance scales or such scales as may be approved by AOAC International or the American Dairy Science Association when weighing cream for testing, when the tests are to be used as a basis for making payment for the cream.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-218. Unlawful acts — Improper centrifuges.

It shall be improper to use other than standard types of centrifuges approved by AOAC International or the American Dairy Science Association.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-219. Unlawful acts — Improper testing apparatus.

It shall be unlawful to use other than specifications for apparatus and chemicals and directions for testing milk and cream which conform to those adopted by AOAC International or the American Dairy Science Association with such additions as are deemed advisable to make them applicable to the provisions of this subchapter. All types of test tubes, bottles, pipettes, instruments, or specified weights used in connection with testing or determining the value of milk, cream, or other dairy products by the use of the Babcock test shall be approved by AOAC International or the American Dairy Science Association. Cream test weights shall be certified by the manufacturer as to accuracy and stamped on both top and bottom.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-220. Unlawful acts — Unclean instruments.

It shall be unlawful for any person to use any test tube, bottle, pipette, or instrument in connection with the test which is not perfectly clean.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-221. Unlawful acts — Improper temperature for tests.

It shall be unlawful to maintain milk and cream tests at temperatures other than one hundred thirty degrees to one hundred forty degrees Fahrenheit (130°–140°F) for at least five (5) minutes before the

reading of the percent of butterfat is made and recorded. In maintaining this temperature, water shall be used, the water to extend above the butterfat column in the bottle neck.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-222. Unlawful acts — Improper reading of butterfat control.

It shall be unlawful to read the percent of butterfat in cream tests without the correct use of gymol or similar oils.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-223. Unlawful acts — Handling in insanitary places.

It shall be unlawful to handle milk, cream, butter, frozen desserts, or other dairy products in unclean or insanitary places, or in any insanitary manner, or to keep, store, or prepare for market any cream, milk, or other dairy products in the same enclosure with any hide or fur house, or any cow, horse, or hog barns or sheds, or other places where livestock or poultry are kept, housed, or handled, or in rooms or buildings used as gasoline or oil filling stations, except as the sealed final product. Cream or milk receiving and buying stations located in connection with produce houses where poultry or fur and hides, rabbits, etc., are purchased or in connection with restaurants or living quarters shall be separated by a solid wall such as plaster, brick, or tongue and groove or other tight lumber. Self-closing solid connecting doors may be used between cream rooms and other rooms provided that cream rooms are adequately ventilated. Inside walls and ceilings of cream stations shall be painted annually with light-colored waterproof paint. Where water systems are available, running water shall be provided for cleaning purposes. Cream rooms must be used exclusively for the handling of dairy products.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-224. Unlawful acts — Products of diseased animals — Contaminated products.

It shall be unlawful in all cases to sell or offer for sale milk or cream from diseased or unhealthy animals, as certified to be unhealthy or diseased by the State Veterinarian; milk, cream, or any of their derivatives handled by any person suffering from or coming in contact with persons afflicted with any contagious disease; to sell or offer for sale any milk, cream, or any of their derivatives which have been exposed to contamination or into which may have fallen any insanitary

articles or any foreign substance which would render the milk, cream, or the product manufactured therefrom, unfit for human consumption.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-225. Unlawful acts — Preservatives.

It shall be unlawful to sell or offer or expose for sale anywhere in this state, milk, cream, or other dairy products containing any preservatives of any kind whatsoever except common salt or sugar for flavoring purposes only or that shall not comply with the standards provided in this subchapter.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-226. Unlawful acts — Removing label of health officer.

It shall be unlawful to remove or deface any tags or labels which have been attached by the Director of the Department of Health or his or her deputies to a receptacle containing cream, milk, or other dairy products.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-227. Unlawful acts — Unpasteurized products.

It shall be unlawful to make and offer for sale butter or frozen desserts unless all dairy products used in their manufacture are pasteurized except in the case of butter made by a dairy farmer who produces a majority of the milk or cream he or she uses.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-228. Unlawful acts — Products below standard.

It shall be unlawful to sell, keep for sale, expose, or offer for sale any milk products or other dairy products which shall not conform at least to the minimum standards provided in this subchapter.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-229. Unlawful acts — Cream graded for buttermaking — Price differential.

It shall be unlawful to purchase or receive cream for buttermaking purposes except on the basis of the following grades: Sweet cream, first grade and second grade. Every person shall buy or receive cream on a grade basis, and each grade shall be kept and shipped so as to arrive within forty-eight (48) hours after the date of purchase at a dairy

products manufacturing plant. The cream shall be shipped in a separate can plainly marked to indicate the grade therein and the date graded, and the person buying or receiving the cream shall maintain a price differential between grades on a recognized established differential. This differential shall be a minimum of two cents (2¢) per pound of butterfat between first grade cream and second grade cream.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-230. Unlawful acts — Mold or sediment test.

It shall be unlawful to purchase raw cream or milk without applying a mold or sediment test, monthly or more often if necessary, to each patron's cream or milk, whether purchased by truck route, cream station, direct shipment, or delivered directly to a dairy products plant.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-231. Unlawful acts — Empty cans inverted.

It shall be unlawful to fail to invert empty cream and milk cans on racks located inside of cream stations.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-232. Unlawful acts — Records of cream buyers — Monthly reports.

It shall be unlawful for all cream buyers to purchase cream without keeping a careful record of all cream bought as first grade and second grade, and they shall render the report regularly to the creamery or factory receiving the cream. Creameries shall report the above information monthly, together with other cream purchase reports to the Director of the Department of Health on forms furnished them.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-233. Unlawful acts — Place of testing or grading — Delivery to carrier in unwholesome condition.

It shall be unlawful for all persons collecting milk or cream on routes to do any sampling, testing, or grading en route. All sampling, testing, and grading must be done in a licensed milk or cream station or a dairy manufacturing plant. No pouring from one can to another shall be done except in a licensed milk or cream station or a dairy manufacturing plant. Only containers specifically manufactured for the handling of milk or cream shall be used. No milk or cream to be used in the

manufacture of food products shall be delivered in an unwholesome condition to a carrier.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-234. Unlawful acts — Operation without permit.

It shall be unlawful for any person, firm, or corporation to operate a dairy products plant, including milk and cream stations, or freeze or manufacture frozen desserts, or operate a condensery depot within the State of Arkansas without having first secured a permit, except as provided for in § 20-59-244, signed by the Director of the Department of Health and bearing the seal of his or her office. The permit shall be displayed conspicuously at the place of business.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-235. Unlawful acts — Labeling of cheese.

It shall be unlawful for any person, firm, or corporation to sell, exhibit, or offer for sale skim milk cheese as defined in § 20-59-201(3)(C) without the following labeling:

(1) Skim milk cheese or part-skim milk cheese shall be stamped with dark-colored purple vegetable ink using a rubber stamp three to four inches (3-4") wide and ten inches (10") long which shall contain the wording "SKIM MILK" eight (8) times, one under the other in letters three-eighths to one-half inch ($\frac{3}{8}$ – $\frac{1}{2}$ ") high;

(2) Square cheese prints shall be stamped on the entire face;

(3) Longhorn cheese shall be stamped on the long edge running from top to bottom; and

(4) On cheese commercially known as "Daisies", the stamp shall repeat itself entirely around the circumference of the cheese.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-236. Unlawful acts — Removal of label.

It shall be unlawful for any person, firm, or corporation to remove or deface the required labeling on skim milk cheese except as is unavoidable in its final sale.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-237. Unlawful acts — Renovation of butter or cheese.

It shall be unlawful to renovate butter or cheese without pasteurizing all such products at the time of renovation.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-238. Unlawful acts — Labeling of renovated butter.

It shall be unlawful to sell, offer for sale, or store renovated or process butter without labeling the product with the words "RENOVATED BUTTER" on the outside of the carton, wrap, or container in which it is placed for final sale in letters at least as large as any other printing on the carton, wrap, or container.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-239. Unlawful acts — Labeling ice cream.

It shall be unlawful to sell ice cream or ice milk in factory-filled package form unless it is labeled with the printed name of the manufacturer, the wholesale distributor, or the retailer. No person shall sell or offer or expose for sale ice milk unless contained in a package or enclosed in a wrapper upon which package or wrapper shall be conspicuously printed the words "ICE MILK".

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-240. Unlawful acts — Labeling ice milk.

(a) It shall be unlawful to sell ice milk unless all containers are conspicuously so labeled.

(b) Places where ice milk is sold at retail shall display a conspicuous legible sign containing the words "ICE MILK SOLD HERE" in plain block letters not less than six inches (6") high.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-241. Unlawful acts — Labeling ice cream mix.

It shall be unlawful to sell or transport ice cream mix to another location for manufacture or freezing except in sealed containers that cannot be opened without breaking the seal, and the label shall be securely attached to the container and shall show the name of the manufacturer and the percentage of milk fat of the ice cream mix contained therein.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-242. Unlawful acts — Bacteria count of frozen dessert.

It shall be unlawful for any dairy products plant to produce, manufacture, freeze, process, sell, expose, or offer for sale any frozen dessert having a bacteria count on three (3) consecutive tests of more than one hundred thousand (100,000) bacteria per gram.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-243. Unlawful acts — Graded milk.

It shall be unlawful to label, sell, or offer for sale any milk as graded milk unless the grade is officially awarded by the Director of the Department of Health having jurisdiction in accordance with the provisions of the United States Public Health Service Standard Milk Ordinance and Code.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-244. Unlawful acts — Pasteurized milk — Permit.

It shall be unlawful to label, sell, or offer for sale as pasteurized any milk unless it has been pasteurized in accordance with the provisions of the United States Public Health Service Standard Milk Ordinance and Code under a permit issued by the Director of the Department of Health. However, no permit shall be required where plants are operating under permit from a municipality enforcing the United States Public Health Service Standard Milk Ordinance and Code.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-245. Unlawful acts — Name of distributor on container — Sale of misprint bottle caps.

It shall be unlawful to sell or offer for sale any milk or milk product in bottles or other original containers for final consumption unless the bottle or container has a cap or cover with the name of the dairy products plant distributor printed thereon. The use or sale of misprinted milk bottle caps is declared unlawful.

History. Acts 1941, No. 114, § 3; A.S.A. 1947, § 82-914.

20-59-246. Manufacturing milk permit.

(a) Every dairy which produces milk or cream to be used for manufacturing purposes shall be required to procure from the Director of the Department of Health a manufacturing milk permit.

(b) Any dairy may obtain a manufacturing milk permit by paying an annual permit fee of twenty-five dollars (\$25.00) to the Department of

Health and by meeting the minimum requirements of the Rules and Regulations Pertaining to Milk for Manufacturing Purposes.

(c) Permit fees shall be due by June 30 of each year. Grade "A" dairies with suspended permits and selling milk for manufacturing purposes will be given a ninety-day exemption from the requirement of obtaining a manufacturing milk permit if they meet the requirements of a manufactured milk producer.

History. Acts 1941, No. 114, § 4; A.S.A. 1947 § 82-915; Acts 1987, No. 534, § 1.

20-59-247. Disposition of funds.

(a) All fees and fines collected under this subchapter are special revenues and shall be deposited into the State Treasury to the credit of the Public Health Fund to be used exclusively by the Division of Environmental Health Protection of the Department of Health.

(b) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is authorized to transfer all unexpended funds relative to manufactured milk that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1941, No. 114, § [9], as added by 1987, No. 534, § 2; 1991, No. 328, § 4.

20-59-248. Incidental sales of goat milk and whole milk that has not been pasteurized not prohibited — Definitions.

(a) For purposes of this section:

(1) "Incidental sales of goat milk and whole milk that has not been pasteurized" are those sales where the average monthly number of gallons sold does not exceed five hundred gallons (500 gal);

(2) "Locally produced whole milk products" means whole milk that has been produced on an Arkansas farm; and

(3)(A) "Whole milk" means the lacteal secretion obtained by the complete milking of one (1) or more healthy cows, properly fed and kept, that when offered for sale contains at least three and one-fourth percent (3.25%) of butterfat and eight and one-fourth percent (8.25%) solids not fat.

(B) "Whole milk" does not include lacteal secretion obtained within fifteen (15) days before or five (5) days after calving or a longer period if necessary to render the milk practically colostrum free.

(b) This subchapter does not prohibit incidental sales of raw goat milk and whole milk that has not been pasteurized directly to consumers at the farm where the milk is produced or preclude the advertising

of incidental sales of goat milk and whole milk that has not been pasteurized.

(c) With respect to whole milk that has not been pasteurized, the seller shall:

(1) Post at the point of sale a sign that is no smaller than two feet by four feet (2' x 4') that includes the following information in large, clear text:

(A) The name and address of the farm with seller's contact information; and

(B) The following statement:

"This product, sold for personal use and not for resale, is fresh whole milk that has NOT been pasteurized. Neither this farm nor the milk sold by this farm has been inspected by the State of Arkansas. The consumer assumes all liability for health issues that may result from the consumption of this product."; and

(2) Affix a label to the bottle or package that includes:

(A) The name and address of the farm; and

(B) The following statement:

"This product, sold for personal use and not for resale, is fresh whole milk that has NOT been pasteurized. Neither this farm nor the milk sold by this farm has been inspected by the State of Arkansas. The consumer assumes all liability for health issues that may result from the consumption of this product."

(d) A farmer who sells fresh whole unpasteurized milk shall permit inspection of his or her cows and barns by his or her customers upon request.

History. Acts 1993, No. 816, § 1; 2013, No. 1209, § 1.

Amendments. The 2013 amendment inserted "and whole milk that has not been pasteurized" after "goat milk"

throughout the section; subdivided part of (a) as (a)(1); substituted "five hundred (500)" for "one hundred (100)" in (a)(1); and added (a)(2), (a)(3), (c), and (d).

SUBCHAPTER 3 — MELLORINE

SECTION.

20-59-301. Applicability.

20-59-302. Penalties.

20-59-303. State Board of Health — Enforcement.

20-59-304. Production requirements generally.

SECTION.

20-59-305. Production permit required.

20-59-306. Original containers and labeling required.

20-59-307. Imitation mellorine.

20-59-308. False or misleading advertising prohibited.

Effective Dates. Acts 1953, No. 416, § 15: effective 60 days after becoming law.

20-59-301. Applicability.

Every person, firm, or corporation producing, manufacturing, processing, freezing, or packaging mellorine or mellorine mix shall comply with the same rules and regulations that govern the production and manufacturing of ice cream and other manufactured milk products, as promulgated by the State Board of Health.

History. Acts 1953, No. 416, § 10;
A.S.A. 1947, § 82-918.9.

20-59-302. Penalties.

(a) Any person, firm, or corporation that violates any of the provisions of this subchapter or any of the rules and regulations issued in connection therewith or any officer, agent, or employee thereof who directs or knowingly permits such a violation or who aids or assists such a violation shall be guilty of a violation and upon conviction shall be subject to a fine of not more than two hundred fifty dollars (\$250) and not less than fifty dollars (\$50.00).

(b) Each violation shall constitute a separate offense.

History. Acts 1953, No. 416, § 13;
A.S.A. 1947, § 82-918.12; Acts 2005, No.
1994, § 134.

20-59-303. State Board of Health — Enforcement.

(a) The State Board of Health, through its constituted officers and agents, is authorized and directed to administer and to supervise the enforcement of this subchapter, to prescribe rules and regulations to carry out its purpose, to provide for such periodic inspections and investigations as it may deem necessary to disclose violations, to receive and provide for the investigation of complaints and to provide for the institution and prosecution of civil or criminal actions, or both.

(b) The provisions of this subchapter and the rules and regulations issued in connection therewith may be enforced by injunction in any court having jurisdiction to grant injunctive relief. Adulterated or misbranded articles illegally held or otherwise involved in a violation of this subchapter or of the rules and regulations shall be subject to seizure and disposition in accordance with an order of court.

(c) However, any aggrieved party shall have the right to apply to the circuit court in the county of his or her residence for a review of any summary action on the part of the board or its agents. For this purpose, service of process upon the Director of the Department of Health at any place in this state shall constitute a valid service in the application for review.

History. Acts 1953, No. 416, § 11;
A.S.A. 1947, § 82-918.10.

20-59-304. Production requirements generally.

(a) Any person, firm, or corporation that can and does comply with the rules and regulations as promulgated by the State Board of Health and upon the payment of the permit fee and the issuance of a permit shall be eligible to produce, manufacture, process, freeze, and package mellorine and mellorine mix.

(b) The plants must have available the necessary equipment to package the product in containers as set out in this subchapter. However, plants may manufacture mellorine mix without owning the necessary equipment to package the product, so long as they sell the mellorine mix to a processing plant which has been issued a permit and has the necessary equipment to package mellorine.

History. Acts 1953, No. 416, § 12;
A.S.A. 1947, § 82-918.11.

20-59-305. Production permit required.

(a) It shall be unlawful for any person, firm, or corporation to operate a plant producing, manufacturing, processing, freezing, or packaging mellorine or mellorine mix without having first secured a permit signed by the Director of the Department of Health and bearing the seal of his or her office. The permit shall be displayed conspicuously at the place of business.

(b) Permits shall be issued for one (1) year and shall be in effect from April 1 through March 31 of each year and shall be cancelled, withdrawn, or suspended by the State Board of Health for failure to comply with any of the provisions of this subchapter after due notice in writing has been given and the licensee has been granted a hearing.

(c) Any licensee whose permit has been cancelled, withdrawn, or suspended as provided in this section shall have the right of appeal from the action of the board to the circuit court of the county of his or her residence.

(d) The director shall collect for the permits, and all funds collected by the director under the provisions of this subchapter shall be deposited into the State Treasury.

History. Acts 1953, No. 416, §§ 7, 8;
1979, No. 521, § 2; A.S.A. 1947, §§ 82-918.6, 82-918.7.

20-59-306. Original containers and labeling required.

(a) Mellorine shall be sold in or served from original, sealed, factory-filled containers.

(b) The container shall be labeled "MELLORINE", with the lettering of the word "mellorine" to be at least three-eighths inch ($\frac{3}{8}$ ") in size and in every case shall appear in as large type size and as prominent as any other wording on the container except the brand name.

(c) Use of the word “cream” or its phonetic equivalent, however spelled, in connection with the labeling, advertising, branding, or sale of mellorine is prohibited, as is the use of the name of any product defined under § 20-59-201(4)(A)-(I), except in the name identifying the manufacturer.

(d) The packaging, labeling, sale, offering for sale, serving, or dispensing of mellorine in violation of subsections (a)-(c) of this section is prohibited.

History. Acts 1953, No. 416, §§ 3, 6; 1977, No. 92, § 1; 1979, No. 521, § 2; A.S.A. 1947, §§ 82-918.2, 82-918.5.

20-59-307. Imitation mellorine.

(a) Any food product containing any food fat as defined in § 20-59-201(4)(J)(ii) which is made in semblance or in imitation of mellorine as defined and standardized in § 20-59-201 but which does not conform to the definition and standard shall be deemed to be adulterated and misbranded notwithstanding the employment of any fanciful name or the use of the word “imitation” to designate the product.

(b) The adulteration and misbranding of mellorine in violation of subsection (a) of this section is prohibited.

History. Acts 1953, No. 416, §§ 5, 6; A.S.A. 1947, §§ 82-918.4, 82-918.5.

20-59-308. False or misleading advertising prohibited.

(a) The false and misleading advertising of mellorine is prohibited.

(b) An advertisement of mellorine shall be deemed to be false and misleading if in the advertisement representations are made or suggested by statement, word, grade, designation, design, device, symbol, sound, or any combination thereof that mellorine is a dairy product.

(c) However, nothing contained in this section shall prevent a truthful, accurate, and full statement in any advertisement of all the ingredients in mellorine.

(d) The false and misleading advertising of mellorine in violation of subsections (a)-(c) of this section is prohibited.

History. Acts 1953, No. 416, §§ 4, 6; A.S.A. 1947, §§ 82-918.3, 82-918.5.

SUBCHAPTER 4 — GRADE “A” MILK PROGRAM ACT

SECTION.

20-59-401. Title.

20-59-402. Definitions.

20-59-403. Division of Environmental Health Protection — Regulatory powers and duties.

20-59-404. Inspection fees.

SECTION.

20-59-405. Disposition and transfer of inspection fees.

20-59-406. Motor vehicles.

20-59-407. Reports to Grade “A” Milk Program Advisory Committee.

Effective Dates. Acts 1981, No. 587, § 13: Mar. 18, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Grade 'A' Milk Inspection Program is essential to the public health, safety, and welfare of the people of this State, and that the immediate passage of this Act is necessary to establish reasonable fees to be set aside and used to defray the cost of said program within the Division of Sanitarian Services of the Department of Health. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 634, § 3: Apr. 4, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that due to current economic conditions, budgetary constraints may limit the ability of the Department of Health to adequately provide needed services unless

some license fees are increased; that it is most equitable to make this increase effective immediately upon passage of this Act. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 191, § 5: Feb. 19, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that this act should become effective at the beginning of the next fiscal year; that the beginning of the next fiscal year is July 1, 1991; that unless this emergency clause is adopted this act may not become effective until after that date. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-59-401. Title.

This subchapter may be cited as the "Arkansas Grade 'A' Milk Program Act of 1981".

History. Acts 1981, No. 587, § 10; A.S.A. 1947, § 82-4015.

20-59-402. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Distributors of Grade 'A' milk and milk products processed by plants outside of Arkansas" means any person who offers for sale or sells to another any Grade "A" milk or milk products in Arkansas;

(2) "Division of Environmental Health Protection" means the Division of Environmental Health Protection of the Department of Health;

(3) "Grade 'A' milk and milk products" means milk and milk products that are in compliance with the Grade "A" milk and milk products control laws and regulations of the State of Arkansas;

(4) "Imported raw milk" means any milk not produced under routine inspection of Arkansas and imported into the State of Arkansas;

(5) "Milk hauler" means any person who samples and transports Grade "A" raw milk and raw milk products to Grade "A" milk plants or receiving or transfer stations;

(6) "Milk inspection fee" means the Grade "A" milk and milk products inspection fee;

(7) "Milk Inspection Fees Fund" means the fund in the State Treasury into which the Grade "A" milk and milk products inspection fees are to be deposited;

(8) "Milk plant" means a milk plant in any place, premise, or establishment where Grade "A" milk and milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution;

(9) "Producer" means any person who produces Grade "A" raw milk inspected by the State of Arkansas;

(10) "Producer-distributor" means a producer who also is a distributor; and

(11) "State" means the State of Arkansas.

History. Acts 1981, No. 587, § 1; A.S.A. 1947, § 82-4006.

20-59-403. Division of Environmental Health Protection — Regulatory powers and duties.

(a) The Division of Environmental Health Protection of the Department of Health shall assume all regulatory duties, powers, and responsibilities pertaining to production and distribution of Grade "A" milk and milk products in this state.

(b) The division shall provide Grade "A" milk permits, inspection, and laboratory services to all qualified Grade "A" milk plants, producers, producer-distributors, distributors, milk haulers, receiving stations, and transfer stations.

History. Acts 1981, No. 587, § 2; A.S.A. 1947, § 82-4007.

20-59-404. Inspection fees.

(a) In order to make the Grade "A" Milk and Milk Products Inspection and Regulation Program self-supporting, the Accounting Division of the Department of Health shall collect on a monthly basis unless otherwise stated the following Grade "A" milk and milk products inspection fees:

(1) Producers shall pay \$.030 per one hundred pounds (100 lbs.) of Grade "A" milk inspected by the state;

(2) Importers of raw Grade "A" milk produced and inspected in another state and imported into Arkansas as raw Grade "A" milk shall pay an inspection fee of ten dollars (\$10.00) for each sample analyzed by the laboratory of the Department of Health;

(3) Milk plants shall pay \$.030 per one hundred pounds (100 lbs.) of Grade "A" milk processed or distributed;

(4) Producer-distributors shall pay \$.065 per one hundred pounds (100 lbs.) of Grade "A" milk produced or sold;

(5) Milk haulers who sample and transport Grade "A" milk in the state shall pay an annual permit fee of ten dollars (\$10.00). The fee shall be due January 1 of each year;

(6) Distributors of Grade "A" milk processed by plants outside of Arkansas and sold in the state shall pay \$.030 per one hundred pounds (100 lbs.) or a monthly minimum fee of two hundred dollars (\$200) per month plus ten dollars (\$10.00) for each sample analyzed by the laboratory of the department. The larger of the two sums shall be paid during the following month; and

(7) Single service plants shall pay an annual permit fee of two hundred dollars (\$200). This fee shall not be applied to plants paying a milk inspection fee. The fee shall be due January 1 of each year.

(b) If any person fails, neglects, or refuses to pay the above fee and is delinquent for a period of thirty (30) days, the Director of the Department of Health is directed and empowered to prohibit the person from distributing, hauling, selling, or otherwise handling Grade "A" milk or milk products in the state and shall suspend his or her permit and withdraw all inspection service from the establishment until fees are paid in full.

(c)(1) The Grade "A" milk and milk products inspection fees shall not be greater than the actual cost of the inspections.

(2) If there is a balance in the Milk Inspection Fees Fund equivalent to ninety-day maintenance of the program, one (1) month of the milk inspection fees shall be forgiven.

(d) The fees set forth in subsection (a) of this section may be increased by up to one half cent (\$.005) beginning July 1, 1992, upon certification by the Chief Fiscal Officer of the State that the expenditures of the program exceed the amount of fees collected. Any request for an increase in fees shall be reviewed by the Grade "A" Milk Program Advisory Committee.

History. Acts 1981, No. 587, §§ 3, 4; A.S.A. 1947, §§ 82-4008, 82-4009; Acts 1987, No. 634, § 1; 1991, No. 191, § 1.

20-59-405. Disposition and transfer of inspection fees.

(a)(1) All moneys received by the Department of Health for milk inspection fees as established in this subchapter shall be deposited into the State Treasury, and the Treasurer of State shall, after deducting therefrom one and one-half percent (1½%) of the amount for credit to the Constitutional Officers Fund to be used for the purposes provided by law, credit the net amount as special revenues to the credit of the Milk Inspection Fees Fund to be used by the Division of Environmental Health Protection of the Department of Health exclusively for the purpose of defraying the cost of maintenance, operation, and improvement of the permits, inspections, and laboratory services of the Grade "A" Milk and Milk Products Inspection and Regulation Program.

(2) The unexpended balance of the funds in the Milk Inspection Fees Fund at the end of each fiscal year shall not be considered as a part of the unexpended fund balances of the department that are recovered by the Treasurer of State at the close of each year, and any balance in the Milk Inspection Fees Fund shall be carried forward in the Milk Inspection Fees Fund to the next fiscal year to be used for the support of the program as provided by law.

(b) The Chief Fiscal Officer of the State is authorized from time to time to make transfers of moneys in the Budget Stabilization Trust Fund as loans to the Milk Inspection Fees Fund to be used for the maintenance and operation of the program of the Division of Environmental Health Protection of the Department of Health, provided that any moneys loaned from the Budget Stabilization Trust Fund to the Milk Inspection Fees Fund shall be repaid from fees derived from the program on or before the last day of the fiscal year in which the loan of the funds is made.

History. Acts 1981, No. 587, § 5; A.S.A. 1947, § 82-4010.

20-59-406. Motor vehicles.

(a) Vehicles purchased with milk inspection fee funds or assigned to the Grade "A" Milk and Milk Products Inspection and Regulation Program shall be at the disposal of personnel of the program, provided in case of emergency or natural disaster that the motor vehicles may be used at the discretion of the Director of the Division of Environmental Health Protection of the Department of Health.

(b) Motor vehicles purchased with moneys from the Milk Inspection Fees Fund shall not be loaned, transferred, or assigned to any other state agency on a permanent basis.

(c) Any moneys received from the sale or trade of motor vehicles purchased with funds from the fund shall be credited to the fund.

History. Acts 1981, No. 587, §§ 6-8; A.S.A. 1947, §§ 82-4011 — 82-4013.

20-59-407. Reports to Grade "A" Milk Program Advisory Committee.

The Department of Health shall provide the Grade "A" Milk Program Advisory Committee on a quarterly basis a full and complete statement of all receipts and disbursements of the Milk Inspection Fees Fund.

History. Acts 1981, No. 587, § 9; A.S.A. 1947, § 82-4014.

SUBCHAPTER 5 — GRADE “A” MILK PROGRAM ADVISORY COMMITTEE

SECTION.

- 20-59-501. Title.
- 20-59-502. Definitions.
- 20-59-503. Creation — Members.
- 20-59-504. Officers.

SECTION.

- 20-59-505. Meetings.
- 20-59-506. Review of proposed rules and regulations — Exceptions.

Effective Dates. Acts 1981, No. 506, § 21: Mar. 13, 1981. Emergency clause provided: “It is hereby found and determined by the General Assembly that the Arkansas Grade ‘A’ milk program is a worthwhile program and is necessary for the inspection of Grade ‘A’ milk producers, distributors, producer-distributors, milk plants, receiving stations, transfer stations and milk haulers. Therefore, an emergency is declared to exist and this Act being necessary for preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 1983, No. 310, § 2: Mar. 2, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that members of the Advisory Committee to the Arkansas Grade ‘A’ Milk Program are not now authorized to receive per diem or expense allowances for attending regular and special meetings of the Committee, and that attendance at such meetings results in financial hardship to members of the Committee, who should be authorized to receive reimbursement for reasonable and necessary expenses and travel incurred in connection with attending meetings of the Committee, and that the immediate passage of

this Act is necessary to correct said situation. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-59-501. Title.

This subchapter may be cited as the “Advisory Committee to the Arkansas Grade ‘A’ Milk Program Act of 1981”.

History. Acts 1981, No. 506, § 1; A.S.A. 1947, § 82-4016.

20-59-502. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Committee" means the Grade "A" Milk Program Advisory Committee;

(2) "Governor" means the Governor of the State of Arkansas;

(3) "Grade 'A' milk and milk products" means milk and milk products that are in compliance with the Grade "A" milk control laws and regulations of the State of Arkansas;

(4) "Grade 'A' milk industry of the State of Arkansas" means Grade "A" milk producers, producer-distributors, milk haulers, milk distributors, dairy farms, milk plants, receiving stations, and transfer stations;

(5) "Grade 'A' milk plant" means a milk plant in any place, premise, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution. The establishment shall possess a valid permit signed by the administrator of the Grade "A" Milk and Milk Products Inspection and Regulation Program;

(6) "Grade 'A' milk producer" means any person who possesses a valid permit signed by the administrator of the program, who operates a dairy farm and provides, sells, or offers milk for sale to a milk plant, receiving station, or transfer station; and

(7) "State" means the State of Arkansas.

History. Acts 1981, No. 506, § 2; A.S.A. 1947, § 82-4017.

20-59-503. Creation — Members.

(a) There is created the Grade "A" Milk Program Advisory Committee to be composed of seven (7) members, to be selected as provided in this section. The committee shall be advisory to the Grade "A" Milk and Milk Products Inspection and Regulation Program for the purpose of recommending rules and regulations concerning Grade "A" milk and milk products and other health code standards within the Grade "A" milk industry of the state.

(b)(1) Four (4) members of the committee shall be appointed by the Governor from the Grade "A" milk industry of the state, two (2) of whom shall be Grade "A" milk producers, one (1) member shall be from a Grade "A" milk plant who is in general management, and one (1) member shall be from a Grade "A" milk plant who is in production management.

(2) Three (3) members shall be appointed by the Governor from the Division of Environmental Health Protection of the Department of Health, one of whom shall be the Director of the Division of Environmental Health Protection of the Department of Health, another to be the state Grade "A" milk survey officer, and one (1) member shall be a Grade "A" milk field sanitarian.

(3) No more than one (1) person from one (1) manufacturing firm or corporation can be elected or serve as a member of the committee at the same time.

(c) All members of the committee shall hold office for the period of six (6) years and until their successors have been duly elected and qualified.

(d) In the case of a vacancy on the committee, the Governor shall immediately appoint a successor to fill the unexpired term of the office.

(e)(1) Members of the committee shall serve without pay but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) Expenses and mileage shall be paid from moneys in the Milk Inspection Fees Fund.

History. Acts 1981, No. 506, §§ 3, 6-10; 1983, No. 310, § 1; A.S.A. 1947, §§ 82-4018, 82-4021 — 82-4025; Acts 1997, No. 250, § 201.

initial members of the Grade “A” Milk Program Advisory Committee were arranged so that two (2) members served for two (2) years, two (2) for four (4) years and three (3) for (6) six years.

Publisher’s Notes. The terms of the

20-59-504. Officers.

(a) The officers of the Grade “A” Milk Program Advisory Committee shall consist of a chair, a vice chair, and secretary, who shall at all times be members of the committee and residents of this state.

(b) Officers of the committee when elected shall hold office for the period of one (1) year each and until their respective successors shall have been elected and qualified.

(c) In the case of a vacancy in any office of the committee, the remaining members of the committee shall elect a successor to fill the unexpired term of the office.

(d)(1) The chair shall be the chief executive of the committee. He or she shall preside at the meetings of the committee. He or she shall have general supervision over the entire business of the committee. He or she shall see that all orders or resolutions of the committee are carried into effect. He or she shall submit to the members at each regular meeting thereof a complete report of the operations and the affairs of the committee for the preceding three (3) months. From time to time, he or she shall report to the committee all matters within his or her knowledge which the interests of the committee may require.

(2) The vice chair, in the absence or in case of inability of the chair to act, shall perform all the duties and have all the powers of the chair. The vice chair shall, in addition, perform such other duties and have such other powers as the committee may, from time to time by resolution, determine.

(3) The secretary shall keep the minutes of all meetings of the committee in books provided for that purpose. He or she shall keep a full, complete, and faithful record of all transactions which shall at all times be open to the inspection of the members of the committee. He or she shall also perform such other duties as may pertain to his or her office or as the chair or vice chair may require. In the absence of the secretary from any meeting of the committee, the records of the proceedings shall be kept by such other person as may be appointed for that purpose at the meeting.

History. Acts 1981, No. 506, §§ 11-14, 16, 17; A.S.A. 1947, §§ 82-4026 — 82-4029, 82-4031, 82-4032.

20-59-505. Meetings.

(a)(1) Regular meetings of the members of the Grade “A” Milk Program Advisory Committee shall be held in the months of January, April, July, and October of each year at such time and place as may be designated by the committee.

(2) Notice of the time and place of the regular meetings shall be sent by the secretary to each member of the committee by mail at least ten (10) days and not more than thirty (30) days before the meeting.

(3) The mailed notice shall be addressed to each member at his or her address as it appears on the membership records of the committee.

(b) Special meetings of the committee shall be held whenever called by the chair or in his or her absence by the vice chair, or by two (2) of the members. The secretary, or if he or she refuses to act, two (2) members of the committee shall give written notice of each special meeting by letter at least five (5) days before the date of the meeting to each member of the committee by mail addressed to each member at his or her address as it appears on the membership records of the committee.

(c) A majority of the members of the committee shall constitute a quorum for business.

(d) Each member of the committee shall have the right to appoint with power of attorney another member in good standing to represent him or her at meetings of the committee.

History. Acts 1981, No. 506, §§ 15, 18, 19; A.S.A. 1947, §§ 82-4030, 82-4033, 82-4034.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Open Meetings Under the Arkansas Freedom of Information Act, 38 Ark. L. Rev. 268.

20-59-506. Review of proposed rules and regulations — Exceptions.

(a) The State Board of Health shall not adopt rules or regulations concerning Grade “A” milk or milk products or other health code standards related to the Grade “A” milk industry of this state until the rules or regulations have been reviewed by the Grade “A” Milk Program Advisory Committee in a regular or specially called meeting.

(b)(1) However, if a meeting is not held within forty-five (45) days after a written notice by the board of intent to promulgate rules and regulations, the review of the committee shall be deemed waived.

(2) The Director of the Department of Health and the board may adopt rules and regulations pertaining to the Grade “A” milk industry of this state in times of emergency or natural disaster without notice to the committee.

History. Acts 1981, No. 506, §§ 4, 5;
A.S.A. 1947, §§ 82-4019, 82-4020.

SUBCHAPTER 6 — PURCHASES BY MILK PROCESSORS

SECTION.

20-59-601. Definitions.

20-59-602. Escrow accounts.

20-59-603. Purchase requirements.

20-59-604. Civil penalties.

SECTION.

20-59-605. Exemption of certain cooperative associations and their members.

20-59-606. Criminal penalties.

20-59-601. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Cooperative association” means any group in which farmers act together in the market preparation, processing, or marketing of farm products or any association organized under § 2-2-101 et seq., the Cooperative Marketing Act, § 2-2-401 et seq., or § 4-30-101 et seq.;

(2) “Dairy farmer” means a farmer engaged in the business of producing milk for sale to milk processors or to a cooperative association of which the dairy farmer is a member;

(3) “Escrow account agent” means an entity within this state which is insured either by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation [abolished];

(4) “Milk processor” means a person who operates a milk, milk products, or frozen desserts processing plant that is located in the State of Arkansas; and

(5) “Purchase price” means an amount of money, based on estimated butterfat content at the time of delivery, that a milk processor agrees to pay a dairy farmer for a purchase of raw milk.

History. Acts 1989, No. 4, § 1.

A.C.R.C. Notes. The Federal Savings and Loan Insurance Corporation referred to in this section was abolished by the Financial Institutions Reform, Recovery,

and Enforcement Act of 1989, Pub. L. No. 101-73. The responsibilities of the former entity have been largely assumed by the Office of the Comptroller of the Currency.

20-59-602. Escrow accounts.

(a)(1) Pursuant to the provisions of this section, a dairy farmer from whom milk was purchased by a milk processor may require the milk processor to establish an escrow account for the benefit of the dairy farmer for the payment of the purchase price of milk as specified in subdivision (a)(2) of this section.

(2) A dairy farmer may require the milk processor to establish an escrow account only if:

(A) The dairy farmer has failed to receive payment of the purchase price for the milk, and the dairy farmer has given written notice by registered mail, return receipt requested, to the milk processor by the end of the thirtieth day after the final date for payment of the purchase price that such payment has not been received; or

(B) A payment instrument received by the dairy farmer from the milk processor has been dishonored, and the dairy farmer has given written notice by registered mail, return receipt requested, to the milk processor by the end of the fifteenth business day after the day that the notice of dishonor was received.

(3) The notice specified by subdivision (a)(2) of this section shall require that an escrow account be established and that the payment received from the sale of any milk or dairy product as specified in subsection (b) of this section shall be deposited into the escrow account until the dairy farmer has received full payment of the purchase price for the milk.

(b)(1) The milk processor shall deposit upon receipt into the escrow account a proportional share of all payments received from the sale of milk or dairy products by the milk processor, which is equal to the amount of the milk sold by the dairy farmer to the processor in proportion to the total amount of milk purchased, for the sale of the milk and dairy products by the milk processor. The payments shall be deposited into the escrow account until the dairy farmer has received full payment for the purchase price for the milk.

(2) The escrow account shall be a segregated interest-bearing account and shall be established for the benefit of the dairy farmer. Upon sufficient proof of identification, the escrow account agent shall promptly pay to the dairy farmer any sum accumulated for his or her benefit in the escrow account.

(c)(1) If any milk processor is required to establish more than one (1) escrow account by operation of the provisions of this section, then the moneys accruing may all be commingled in a single account.

(2) The commingled moneys accumulated in the account shall be distributed to each dairy farmer in the amount due to each.

(3) If the commingled moneys accumulated in the account are insufficient to pay all the dairy farmers, the escrow account agent shall distribute the moneys so accumulated in proportion to the current amount due each.

(d) For the purposes of this section, the moneys held by the escrow account agent shall be deemed to be the property of the dairy farmer, or dairy farmers if such moneys have been commingled, in the current amount due to each, or in proportion to the amount due each.

History. Acts 1989, No. 4, § 2.

20-59-603. Purchase requirements.

A milk processor shall not purchase raw milk from a dairy farmer unless:

- (1) Payment of the purchase price is made according to the provisions prescribed by any applicable federal milk marketing order;
- (2) Any additional provisions are agreed upon by both the dairy farmer or his or her agent and the milk processor; and
- (3) The medium of exchange used is cash, a check for the full amount of the purchase price, or a wire transfer of money in the full amount.

History. Acts 1989, No. 4, § 3.

20-59-604. Civil penalties.

A milk processor who fails to pay for raw milk as provided by this subchapter is liable to the dairy farmer for:

- (1) The purchase price of the raw milk;
- (2) Interest on the purchase price at the rate fixed by law for civil judgments commencing from the date possession is transferred until the date the payment is made in accordance with this subchapter; and
- (3) A reasonable attorney's fee for the collection of the payment.

History. Acts 1989, No. 4, § 5.

20-59-605. Exemption of certain cooperative associations and their members.

This subchapter does not apply to transactions between a cooperative association, while acting as a marketing agent, and its members.

History. Acts 1989, No. 4, § 4.

20-59-606. Criminal penalties.

Any milk processor failing to establish an escrow account upon receipt of notification of a dairy farmer pursuant to the provisions of this subchapter or who fails to continue to make the payments until the dairy farmer has received full payment of the purchase price, upon conviction shall be guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed one (1) year, or both fine and imprisonment.

History. Acts 1989, No. 4, § 6.

SUBCHAPTER 7 — MILK LABORATORY ANTIBIOTIC DRUG TESTING PROGRAM**SECTION.**

20-59-701. Definitions.

20-59-702. Testing program.

SECTION.

20-59-703. Rules and regulations.

20-59-704. Fees — Penalties.

SECTION.

20-59-705. Disposition of funds.

Effective Dates. Acts 1993, No. 701, § 8: Mar. 24, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that current economic conditions and budgetary constraints may limit the ability of the Department of Health to adequately provide necessary services in

the milk industry unless this act is implemented upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

20-59-701. Definitions.

As used in this subchapter:

(1) "Dairy cooperative" means an association of dairy producers organized for the mutual benefit of the dairy producers;

(2) "Dairy plant" means any place, premises, or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, bottled, or prepared for distribution;

(3) "Dairy processor" means any place, premises, or establishment that receives raw milk and pasteurizes and prepares it for human consumption;

(4) "Dairy producer" means any person who produces bulk milk for sale to a dairy cooperative, dairy plant, or other processor;

(5) "Department" means the Department of Health;

(6) "Division" means the Division of Public Health Laboratories of the Department of Health;

(7) "Evaluation officer" means an individual who has been trained, tested, and certified by the department in accordance with guidelines established by the United States Food and Drug Administration Laboratory Quality Assurance Branch to certify milk industry laboratories to test milk for the presence of antibiotic drugs;

(8)(A) "Laboratory" means a laboratory that tests raw milk received from dairy producers for the presence of antibiotic drugs. A laboratory may be located in a dairy plant, dairy cooperative, receiving station, transfer station, or other place where milk samples from bulk trucks or dairy producers are collected or tested.

(B) "Laboratory" shall not include a laboratory that performs quality control tests developed by the Arkansas Dairy Herd Improvement Association or any cooperative field person or plant field person who performs tests on milk quality or butterfat; and

(9) "Laboratory certification program" means a program administered by the Department of Health to certify laboratories to test milk for the presence of antibiotic drugs in a manner consistent with guidelines established by the United States Food and Drug Administration Laboratory Quality Assurance Branch.

History. Acts 1993, No. 701, § 1.

20-59-702. Testing program.

The Public Health Laboratory of the Department of Health may establish a program to certify laboratories to test milk for the presence of antibiotic drugs and to certify evaluation officers to certify the laboratories in accordance with guidelines established by the United States Food and Drug Administration Laboratory Quality Assurance Branch. The program shall be known as the “Milk Laboratory Antibiotic Drug Testing Program”.

History. Acts 1993, No. 701, § 2.

20-59-703. Rules and regulations.

The Department of Health shall have the authority to promulgate such rules and regulations as necessary to administer this subchapter.

History. Acts 1993, No. 701, § 2.

20-59-704. Fees — Penalties.

(a)(1) By June 1 of each year, the Department of Health shall determine the cost of the Milk Laboratory Antibiotic Drug Testing Program, which shall not exceed twenty-two thousand dollars (\$22,000) for the first fiscal year and which shall not exceed the actual cost of operating the program for any subsequent year.

(2) Each laboratory participating in the program shall be assessed a fee to be determined by dividing the total cost of operating the program by the number of laboratories participating in the program.

(3) Beginning on August 1 of each year that the program is in operation, the department shall collect fees from the laboratories.

(4) Failure to pay the assessed fee by October 1 of each year that the program is in operation will result in a late penalty of five percent (5%) of the assessed fee.

(5) Failure to pay the assessed fee and any penalty by October 31 shall render the laboratory certification invalid.

(b) Any laboratory that wishes to become certified in standard plate count, cryoscope, direct microscopic somatic cell count, and electronic somatic cell count shall be assessed an additional fee of seven hundred fifty dollars (\$750) to be paid by August 1 of each year.

History. Acts 1993, No. 701, § 3.

20-59-705. Disposition of funds.

(a) All fees and fines collected under this subchapter are hereby declared special revenues and shall be deposited into the State Treasury to the credit of the Public Health Fund. All fees and fines collected

under this subchapter are to be spent solely in support of the Milk Laboratory Antibiotic Drug Testing Program.

(b) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Health is hereby authorized to transfer all unexpended funds relative to the program that pertain to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for the expenditure for the same purpose for any following fiscal year.

History. Acts 1993, No. 701, § 4.

CHAPTER 60
MEAT AND MEAT PRODUCTS

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ARKANSAS MEAT AND MEAT PRODUCTS INSPECTION ACT.
- 3. MEAT AND MEAT PRODUCTS CERTIFICATION ACT.

RESEARCH REFERENCES

- Am. Jur.** 35A Am. Jur. 2d, Food, §§ 31,
32.
C.J.S. 36A C.J.S., Food, § 3 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-60-101. Use of imported meat in food establishment — Definition.

SECTION.

20-60-102. Arkansas bacon.

20-60-101. Use of imported meat in food establishment — Definition.

(a)(1) As used in this section, “food service establishment” means any:

(A) Fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, soda fountain, sandwich shop, hotel kitchen, smorgasbord, tavern, bar, cocktail lounge, night club, roadside stand, industrial feeding establishment, school lunch project, private, public, or nonprofit organization or institution routinely serving the public, catering kitchen, commissary, or similar place in which the food or drink is prepared for sale or for service on the premises or elsewhere;

(B) Grocery store, delicatessen, meat market, retail bakery, or other establishment that sells or otherwise provides food for immediate or on-premise consumption, regardless of whether serving food for immediate consumption is the primary activity of the business; or

(C) Eating and drinking establishment where food is served or provided for the public with or without charge.

(2) The following places where food is served shall be exempt from the definition of a food service establishment:

(A) Group homes routinely serving ten (10) or fewer persons;

(B) Day care centers routinely serving ten (10) or fewer persons;

(C) Potluck suppers, community picnics, or other group gatherings where food is served but not sold;

(D) Nonprofit organizations that sell food on a temporary basis for fund-raising events; and

(E) Hospital kitchens and nursing home kitchens.

(b) Each food service establishment shall indicate on its menu or on a notice prominently placed in the establishment whether beef imported from outside the United States is served if the proprietor of the establishment knowingly, willfully, and consistently serves imported beef.

(c) Any person found guilty of violating this section shall be guilty of a violation and upon conviction fined ten dollars (\$10.00) for the first offense and twenty dollars (\$20.00) for the second or subsequent offense.

History. Acts 1979, No. 595, §§ 1-3; A.S.A. 1947, §§ 82-980 — 82-980.2; Acts 2005, No. 1994, § 135.

Cross References. Food service establishments, § 20-57-201 et seq.

20-60-102. Arkansas bacon.

(a)(1) The term “Arkansas bacon” shall not be used to identify any meat product other than the pork shoulder blade Boston roast prepared in the State of Arkansas in accordance with this section.

(2) Pork shoulder blade Boston roast prepared outside the State of Arkansas but in the manner prescribed by this section may be identified as “Arkansas-style bacon”.

(b)(1) “Arkansas bacon” and “Arkansas-style bacon” are produced from the pork shoulder blade Boston roast by removing the neck bones and rib bones by cutting close to the underside of those bones, removing the blade bone or scapula, and removing the dorsal fat covering, including the skin or clear plate, and leaving no more than one-quarter inch ($\frac{1}{4}$) of the fat covering the roast.

(2)(A) The meat is then dry-cured with salt, sugar, nitrites, and spices, and smoked with natural smoke.

(B) The meat may not be injected or soaked in curing brine, nor may any artificial or liquid smoke be applied to the meat.

(3) The pork shoulder blade Boston roast includes the porcine muscle, fat, and bone cut interior of the second or third thoracic

vertebrae and posterior of the atlas joint or first cervical vertebrae and dorsal of the center of the humerus bone.

(c) Any person who labels or otherwise identifies meat contrary to the provisions of this section shall be guilty of a violation punishable by a fine not to exceed one thousand dollars (\$1,000).

History. Acts 1987, No. 326, §§ 1-3; 2005, No. 1994, § 135.

SUBCHAPTER 2 — ARKANSAS MEAT AND MEAT PRODUCTS INSPECTION ACT

SECTION.

- 20-60-201. Title.
- 20-60-202. Policy.
- 20-60-203. Definitions.
- 20-60-204. Exceptions.
- 20-60-205. Penalties.
- 20-60-206. Director of the Department of Health — Powers and duties.
- 20-60-207. Compliance with subchapter required.
- 20-60-208. Application for license or exemption.

SECTION.

- 20-60-209. Inspection and sanitary practices required.
- 20-60-210. Inspection procedures.
- 20-60-211. Withdrawal and denial of inspection.
- 20-60-212. Cost.
- 20-60-213. Labeling and marking.
- 20-60-214. Prohibited acts.
- 20-60-215. Records.

Effective Dates. Acts 1967, No. 320, § 20: July 1, 1967.

Acts 1969, No. 351, § 3: Apr. 7, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Act 320 of 1967 have worked undue hardship upon meat processing plants in this State who engage in the business of custom slaughtering and processing of livestock for the use and consumption by the owner thereof without the same being sold in interstate commerce; and that the immediate passage of this Act is necessary to clarify the existing meat inspection law and to remove the discrimination against custom slaughtering and processing of livestock. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1973, No. 311, § 3: Mar. 13, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that the provisions of Act 320 of 1967, as amended by Act 351 of 1969, have worked undue hardship on meat processing establishments which engage in the

business of custom slaughtering and processing of livestock for the use and consumption by the owner thereof, in that said establishments are prohibited from buying or selling meat or meat food products which have been officially inspected, marked, and labeled. It is further found in the language of the Act 351, contradiction to the intent and provisions of the Wholesome Meat Act of December, 1967, as amended by Public Law 91-342 of July, 1970 (Curtis Amendment), thereby endangering the 'Equal-to-Federal' status of the Arkansas Meat Inspection Program administered by the Arkansas State Department of Health, Meat Inspection Division; and that immediate passage of this Act is necessary to clarify the existing meat inspection law and to remove the discrimination against the custom slaughterer and processor of livestock who otherwise may be entitled to exempted status under the provisions of the Act. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

20-60-201. Title.

This subchapter may be cited as the “Arkansas Meat and Meat Products Inspection Act”.

History. Acts 1967, No. 320, § 1; A.S.A. 1947, § 82-2001.

Cross References. Kosher foods, § 20-57-401.

20-60-202. Policy.

(a) Meat and meat food products are an important source of the supply of human food in this state, and legislation to assure that the food supplies are wholesome, unadulterated, and otherwise fit for human consumption and properly labeled is in the public interest.

(b) Therefore, it is declared to be the policy of this state to provide for the inspection of livestock slaughtered, and the carcasses, parts thereof, and meat food products processed therefrom, for human food, at certain establishments to prevent the distribution in intrastate commerce, for human consumption, of livestock carcasses and parts thereof and meat food products which are unwholesome, adulterated, or otherwise unfit for human food, or are improperly labeled or falsely advertised.

History. Acts 1967, No. 320, § 2; A.S.A. 1947, § 82-2002.

20-60-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Adulterated” shall apply to any livestock carcass, part thereof, or meat food product under one (1) or more of the following circumstances:

(A) If it bears or contains any poisonous or deleterious substance which may render it injurious to health. However, if the substance is not an added substance, the article shall not be considered adulterated under this subdivision (1)(A) if the quantity of the substance does not ordinarily render it injurious to health;

(B) If it bears or contains any added poisonous or added deleterious substance, unless the substance is permitted in its production or unavoidable under good manufacturing practices as may be determined by rules and regulations prescribed by the Director of the Department of Health. However, any quantity of added substances exceeding the limit so fixed shall also be deemed to constitute adulteration;

(C) If any substance has been substituted, wholly or in part, therefor;

(D) If damage or inferiority has been concealed in any manner;

(E) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(F) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is;

(2) "Advertisement" means all representations disseminated in any manner or by any means other than by labeling for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of meat or meat products;

(3) "Board" means the State Board of Health;

(4) "Container" and "package" include any box, can, tin, cloth, plastic, or any other receptacle, wrapper, or cover;

(5) "Director" means the Director of the Department of Health of this state, or any person authorized to act in his or her stead;

(6) "Federal Meat Inspection Act" means the Act of Congress approved March 4, 1907, as amended and extended, and the imported meat provisions of subsections 306(b) and (c) of the Tariff Act of 1930, as amended;

(7) "Immediate container" means any consumer package or any other container in which an article, not consumer packaged, is packed;

(8) "Inspection service" means the official governmental service within the Department of Health of this state designated by the director as having the responsibility for carrying out the provisions of this subchapter;

(9) "Inspector" means an employee or official of this state authorized by the director to inspect livestock or carcasses or parts thereof, or meat food products under the authority of this subchapter;

(10) "Intrastate commerce" means commerce within this state;

(11) "Label" means any written, printed, or graphic material upon the shipping container, if any, or upon the immediate container including, but not limited to, any individual consumer package of an article or accompanying the article;

(12) "Livestock" means cattle, sheep, swine, goats, or horses;

(13) "Meat" means any edible part of the carcass of any livestock;

(14) "Meat food product" means any article of food, or any article intended for or capable of use as human food, which is derived or prepared, in whole or in part, from any portion of any livestock, unless exempted by the director upon his or her determination that the article:

(A) Contains only a minimal amount of meat and is not represented as a meat food product; or

(B) Is for medicinal purposes and is advertised only to the medical profession;

(15) "Official establishment" means any establishment in this state as determined by the director at which inspection of the slaughter of livestock or the processing of livestock or carcasses or parts thereof, or meat food products is maintained under the authority of this subchapter. However, the term "official establishment" as used in this subchapter shall not be construed to mean livestock or meat sold by the producer thereof on his, her, or its own farm or ranch on an occasional basis directly to the consumer and user thereof;

(16) "Official inspection mark" means any symbol, formulated pursuant to rules and regulations prescribed by the director, stating that an article was inspected and passed;

(17) "Person" means any individual, partnership, corporation, association, or any other business entity;

(18) "Shipping container" means any container used or intended for use in packaging the article packed in an immediate container;

(19) "Unwholesome" means:

(A) Unsound, injurious to health, containing any biological residue not permitted by rules or regulations prescribed by the director, or otherwise rendered unfit for human food;

(B) Consisting in whole or in part of any filthy, putrid, or decomposed substance;

(C) Processed, prepared, packed, or held under unsanitary conditions whereby any livestock carcass or part thereof or any meat food product may have become contaminated with filth or may have been rendered injurious to health;

(D) Produced in whole or in part from livestock which has died otherwise than by slaughter; or

(E) Packaged in a container composed of any poisonous or deleterious substance which may render the contents injurious to health; and

(20) "Wholesome" means sound, healthful, clean, and otherwise fit for human food.

History. Acts 1967, No. 320, § 3; A.S.A. 1947, § 82-2003.

U.S. Code. The Federal Meat Inspection Act referred to in this section is codi-

fied primarily as 21 U.S.C. § 601 et seq. Subsections 306(b) and (c) of the Tariff Act of 1930 have been repealed.

20-60-204. Exceptions.

(a)(1) The Director of the Department of Health shall, by regulation and under such conditions as to labeling, sanitary standards, practices, and procedures as he or she may prescribe, exempt from specific provisions of this subchapter:

(A) Livestock producers with respect to livestock carcasses and parts thereof, and meat food products, processed by them from livestock of their own raising on their own farms and used by them for personal or private consumption, but in no instance where the product is to be offered or used for public consumption;

(B) Any person engaged in slaughtering livestock or processing livestock carcasses or parts thereof or meat food products for intrastate commerce and the articles so processed by the person, whenever the director determines that it would be impracticable to provide inspection and that the exemption will aid in the effective administration of this subchapter;

(C) Persons slaughtering livestock or otherwise processing or handling livestock carcasses or parts thereof, or meat food products, which have been or are to be processed as required by recognized religious dietary laws, to the extent that the director determines is necessary to avoid conflict with the requirements while still effectuating the purposes of this subchapter; and

(D) Any establishment engaged in slaughtering livestock or processing livestock carcasses or parts thereof, or meat food products for intrastate commerce, and the articles so processed by the establishment when the establishment is subject to inspection under a city ordinance which sets standards in conformity with the minimum standards determined by the director.

(2) The director may, by order, suspend or terminate any exemption under this section with respect to any person whenever he or she finds that the action will aid in effectuating the purposes of this subchapter.

(b) This subchapter shall not apply to any act or transaction subject to regulation under the Federal Meat Inspection Act, where the standards required under the federal act are in conformity with the minimum standards determined by the director.

(c)(1) This subchapter shall not apply to the custom slaughtering by any person, firm, or corporation of cattle, sheep, swine, or goats delivered by the owner thereof for the slaughter and the preparation by the slaughterer and transportation in commerce of the carcass parts thereof, meat, and food products of the animals, exclusively for use in the household of the owner by him or her and members of his or her household and his or her nonpaying guests and employees.

(2) However, the custom slaughterer or processor must not engage in the business of buying or selling any carcass, parts thereof, meat, or food products of any cattle, sheep, swine, goats, or equines capable of use as human food except those products which have been inspected and passed for wholesomeness under continuous state or federal board of agriculture inspection and are properly marked or labeled with the official inspection legends of the appropriate agency.

(3) To maintain entitlement for exemption:

(A) The custom establishment must comply with the regulations which the director is authorized to promulgate to assure that any carcasses, parts thereof, meat, or meat food products prepared or any containers or packages containing uninspected, exempted custom products are separated at all times from inspected carcasses, parts thereof, or meat, or meat food products prepared for sale;

(B) All uninspected products prepared on an exempted custom basis must be plainly marked "Not For Sale" immediately after being prepared and kept so identified until delivered to the owner;

(C) The establishment conducting the exempted custom operation must be maintained and operated in a sanitary manner; and

(D) The products so prepared must not be adulterated, mislabeled, or misbranded according to the provisions of this subchapter.

(d) This subchapter shall not affect any existing right of cities or towns to levy occupation taxes or license fees against establishments covered in this subchapter.

History. Acts 1967, No. 320, §§ 10, 15; 1969, No. 351, § 1; 1973, No. 311, § 1; A.S.A. 1947, §§ 82-2010, 82-2015.

U.S. Code. The Federal Meat Inspection Act, referred to in this section, is codified as 21 U.S.C. § 601 et seq.

20-60-205. Penalties.

(a) Any person who violates the provisions of this subchapter shall upon conviction be subject to imprisonment for not more than six (6) months or a fine of not less than one hundred dollars (\$100) nor more than three thousand dollars (\$3,000), or both imprisonment and fine:

(1) If the violation is committed after one (1) conviction of the person under this section, the person shall be subject to imprisonment for not more than one (1) year or a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or both imprisonment and fine; or

(2) If the violation is committed after two (2) or more convictions of the person under this section have become final, the person shall be subject to imprisonment for not more than two (2) years or a fine of not less than three thousand dollars (\$3,000) nor more than ten thousand dollars (\$10,000), or both imprisonment and fine.

(b) When construing or enforcing the provisions of this subchapter, the act, omission, or failure of any person acting for or employed by an individual, partnership, corporation, association, or other business unit within the scope of his or her employment or office shall in every case be deemed the act, omission, or failure of the individual, partnership, corporation, association, or other business unit, as well as of the person.

(c) No carrier or warehouser shall be subject to the penalties of this subchapter other than the penalties for violation of § 20-60-215 by reason of his or her receipt, carriage, holding, or delivery in the usual course of business as a carrier or warehouser of livestock carcasses, parts thereof, or meat food products owned by another person unless the carrier or warehouser has knowledge or is in possession of facts which would cause a reasonable person to believe that the articles were not inspected or marked in accordance with the provisions of this subchapter or were not otherwise in compliance with this subchapter.

(d) Nothing in this subchapter shall be construed as requiring the Director of the Department of Health to report violations of this subchapter for criminal prosecution whenever the director believes that the public interest will be adequately served and compliance with this subchapter obtained by a suitable written notice of warning.

History. Acts 1967, No. 320, §§ 11, 12;
A.S.A. 1947, §§ 82-2011, 82-2012.

20-60-206. Director of the Department of Health — Powers and duties.

(a)(1) The Director of the Department of Health shall promulgate such rules and regulations and appoint such veterinarians and other qualified personnel as are necessary to carry out the purposes or provisions of this subchapter. The rules and regulations shall be in conformity with the rules and regulations under the Federal Meat Inspection Act as now in effect and with subsequent amendments

thereof unless they are considered by the director as not to be in accord with the objectives of this subchapter.

(2) Notice of proposed rules and regulations shall be given all establishments licensed under this subchapter. A hearing shall be called by the director at which proponents and opponents of the proposed rules and regulations shall be given the opportunity to present arguments supporting their positions. The time, place, and procedure for the hearing shall be determined by the director. No proposed rules and regulations shall become effective until after the hearing.

(b) The director may cooperate with the United States Government in carrying out the provisions of this subchapter and the Federal Meat Inspection Act.

History. Acts 1967, No. 320, §§ 14, 15; A.S.A. 1947, §§ 82-2014, 82-2015.

tion Act, referred to in this section, is codified as 21 U.S.C. § 601 et seq.

U.S. Code. The Federal Meat Inspec-

20-60-207. Compliance with subchapter required.

No establishment in this state shall slaughter any livestock or process any livestock carcasses, or parts thereof, or meat food products for human consumption except in compliance with the requirements of this subchapter.

History. Acts 1967, No. 320, § 8; A.S.A. 1947, § 82-2008.

20-60-208. Application for license or exemption.

(a) Applications for inspection or exemption shall be made on forms furnished by the Director of the Department of Health.

(b) A license shall be good for one (1) year, or any quarter thereof, expiring on December 31 of the year it is issued.

(c) Applicants for licenses shall be required to obtain a license for each establishment owned by them.

(d) Before any license is issued, an inspection shall be made by the director to determine the acceptability of the establishment to do business as desired by the applicant in his or her application for license or exemption.

History. Acts 1967, No. 320, § 8; A.S.A. 1947, § 82-2008.

20-60-209. Inspection and sanitary practices required.

(a) Each official establishment at which livestock are slaughtered or livestock carcasses or parts thereof or meat food products are processed for intrastate commerce shall have the premises, facilities, and equipment inspected and shall be operated in accordance with such sanitary practices as are required by rules or regulations prescribed by the

Director of the Department of Health for the purpose of preventing the entry into and movement in commerce of carcasses, parts thereof, and meat food products which are unwholesome or adulterated.

(b) No livestock carcasses or parts thereof, or meat food product, shall be admitted into any official establishment unless they have been prepared only under inspection pursuant to this subchapter or the Federal Meat Inspection Act or their admission is permitted by rules or regulations prescribed by the director under this subchapter.

(c) The director shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section.

History. Acts 1967, No. 320, § 5; A.S.A. tion Act referred to in this section is codified as 21 U.S.C. § 601 et seq.

U.S. Code. The Federal Meat Inspec-

20-60-210. Inspection procedures.

(a) For the purpose of preventing the entry into or movement in intrastate commerce of any livestock carcass, part thereof, or meat food product which is unwholesome or adulterated and is intended for or capable of use as human food, the Director of the Department of Health shall, where and to the extent considered by him or her necessary, cause to be made by inspectors antemortem inspection of livestock in any official establishment where livestock are slaughtered for such commerce.

(b) For the purpose stated in subsection (a) of this section, the director, whenever slaughtering or other processing operations are being conducted, shall cause to be made by inspectors postmortem inspection of the carcasses and parts thereof of each animal slaughtered in any official establishment. He or she shall cause to be made by inspectors an inspection of all meat food products processed in any official establishment in which meat food products are processed for intrastate commerce.

(c) The director shall also cause, at any time, such quarantine, segregation, and reinspection of livestock, livestock carcasses, and parts thereof, and meat food products in official establishments as he or she deems necessary to effectuate the purposes of this subchapter.

(d)(1) All livestock carcasses and parts thereof, and meat food products, found by an inspector to be unwholesome or adulterated in any official establishment shall be condemned and shall, if no appeal is taken from the determination of condemnation, be destroyed for human food purposes under the supervision of an inspector.

(2) However, articles, which may be made wholesome and unadulterated by reprocessing need not be condemned and destroyed if reprocessed under the supervision of an inspector and thereafter found to be wholesome and unadulterated.

(3) If any appeal is taken from the determination, the articles shall be appropriately marked and segregated pending completion of an

appeal inspection. If the determination of condemnation is sustained, the articles shall be destroyed for human food purposes under the supervision of an inspector.

History. Acts 1967, No. 320, § 4; A.S.A. 1947, § 82-2004.

20-60-211. Withdrawal and denial of inspection.

(a) The Director of the Department of Health may withdraw or otherwise deny inspection under this subchapter with respect to any establishment for such period as he or she deems necessary to effectuate the purposes of this subchapter for any violation of the subchapter or any requirements thereunder by the operation of the establishment.

(b)(1) However, before a withdrawal or denial of inspection is ordered, the director shall give the affected establishment an opportunity for a hearing at which the establishment may present evidence that it has not violated the subchapter or any requirements thereunder.

(2) The hearing shall be held after notice to the establishment in such manner as the director shall determine by his or her rules and regulations.

History. Acts 1967, No. 320, § 13; A.S.A. 1947, § 82-2013.

20-60-212. Cost.

(a) The cost of inspection rendered under this subchapter shall be borne by this state. The cost of overtime and holiday work performed in establishments subject to the provisions of this subchapter at such rates as the Director of the Department of Health may determine shall be borne and paid by the establishments. An inspector performing overtime and holiday work shall be treated as though he or she were on compensatory leave at such compensation as shall equal the rates set by the director.

(b) There is authorized to be appropriated such sums as are necessary to carry out the provisions of this subchapter.

History. Acts 1967, No. 320, §§ 16, 17; A.S.A. 1947, §§ 82-2016, 82-2017.

20-60-213. Labeling and marking.

(a)(1) Each shipping container of any meat or meat food product, inspected under the authority of this subchapter and found to be wholesome and not adulterated, shall at the time the product leaves the official establishment bear, in distinctly legible form, the official inspection mark and the approved plant number of the official establishment in which the contents were processed.

(2) Each immediate container of any meat or meat food product, inspected under the authority of this subchapter and found to be

wholesome and not adulterated, shall at the time the product leaves the official establishment bear, in addition to the official inspection mark, in distinctly legible form, the name of the product, a statement of ingredients if fabricated from two (2) or more ingredients, including a declaration as to artificial flavors, colors, or preservatives, if any, the net weight or other appropriate measure of the contents, the name and address of the processor, and the approved plant number of the official establishment in which the contents were processed. The name and address of the distributor may be used in lieu of the name and address of the processor if the approved plant number is used to identify the official establishment in which the article was prepared and packed.

(3) Each livestock carcass and each primal part of a carcass shall bear the official inspection mark and approved plant number of the establishment when it leaves the official establishment.

(4) The Director of the Department of Health may by rules or regulations require additional marks or label information to appear on livestock carcasses or parts thereof or meat food products when they leave the official establishments or at the time of their transportation or sale in this state. He or she may permit reasonable variations and grant exemptions from the marking and labeling requirements of this section in any number not in conflict with the purposes of this subchapter.

(5) Marks and labels required under this section shall be applied only by or under the supervision of an inspector.

(b) The use of any advertising or any written, printed, or graphic matter upon or accompanying any livestock carcass, or part thereof, or meat food product inspected or required to be inspected pursuant to the provisions of this subchapter, or the container thereof which is false or misleading in any particular, is prohibited.

(c)(1) No livestock carcasses or parts thereof or meat food products inspected or required to be inspected pursuant to the provisions of this subchapter shall be sold or offered for sale by any person, firm, or corporation under any false or deceptive name, but established trade names which are usual to the articles and which are not false or deceptive and which are approved by the director are permitted.

(2) If the director has reason to believe that any advertising or any label in use or prepared for use is false or misleading in any particular, he or she may direct that the use of the advertising or label be withheld unless it is modified in such manner as he or she may prescribe so that it will not be false or misleading.

(3) If the person using or proposing to use any advertising or the label does not accept the determination of the director, he or she may request a hearing, but the use of the advertising or the label shall, if the director so directs, be withheld pending hearing and final determination by the director.

(4) Any determination by the director shall be conclusive unless within thirty (30) days after the receipt of notice of the final determination, the person adversely affected thereby appeals to the Pulaski County Circuit Court.

History. Acts 1967, No. 320, § 6; A.S.A. 1947, § 82-2006.

20-60-214. Prohibited acts.

The following acts or the causing thereof within this state are prohibited:

(1) The processing for, or the sale or offering for sale, transportation, or delivery or receiving for transportation, in intrastate commerce, of any livestock carcass or part thereof, or meat food product unless the article has been inspected for wholesomeness and unless the article and its shipping container and immediate container, if any, are marked in accordance with the requirements under this subchapter or the Federal Meat Inspection Act;

(2) The sale or other disposition for human food of any livestock carcass or part thereof or meat food product which has been inspected and declared to be unwholesome or adulterated under this subchapter;

(3) Falsely making or issuing, altering, forging, simulating, counterfeiting, or using without proper authority any official inspection certificate, memorandum, mark, or other identification, or device for making a mark or identification, used in connection with inspection under this subchapter; or causing, procuring, aiding, assisting in, or being a party to false making, issuing, altering, forging, simulating, counterfeiting, or unauthorized use; or knowingly possessing, without promptly notifying the Director of the Department of Health or his or her representative, uttering, publishing, or using as true, or causing to be uttered, published, or used as true, any falsely made or issued, altered, forged, simulated, or counterfeited official inspection certificate, memorandum, mark, or other identification, or device for making a mark or identification; or representing that any article has been officially inspected under the authority of this subchapter when the article has in fact not been so inspected; or knowingly making any false representation in any certificate prescribed by the director in rules or regulations under this subchapter or any form resembling the certificate;

(4) Using in intrastate commerce any false or misleading advertising with respect to meat or meat products;

(5) Using in intrastate commerce any false or misleading label on any livestock carcass or part thereof, or meat food product;

(6) The use of any container bearing an official inspection mark except for the article in the original form in which it was inspected and covered by the mark unless the mark is removed, obliterated, or otherwise destroyed;

(7) The refusal to permit access by any authorized representative of the director at all reasonable times to the premises of an establishment in this state at which livestock are slaughtered or the carcasses or parts thereof or meat food products are processed for intrastate commerce upon presentation of appropriate credentials;

(8) The refusal to permit access to and the copying of any record as authorized by § 20-60-215;

(9) The using by any person to his or her own advantage, or revealing, other than to the authorized representatives of any government agency in their official capacity, or to the courts when relevant in any judicial proceeding, any information acquired under the authority of this subchapter, concerning any matter which as a trade secret is entitled to protection;

(10) Delivering, receiving, transporting, selling, or offering for sale or transportation in intrastate commerce for human consumption any livestock carcass or part thereof or meat food product which has been processed in violation of any requirements under this subchapter except as may be authorized by and pursuant to rules and regulations prescribed by the director;

(11) Delivering, receiving, transporting, selling, or offering for sale or transportation in intrastate commerce any livestock carcass, or part thereof, or meat food product which is exempted under § 20-60-204, is unwholesome or adulterated, and is intended for human consumption; and

(12) Applying to any livestock carcass, or part thereof, or meat food product, or any container thereof, any official inspection mark or label required under this subchapter except by or under the supervision of an inspector.

History. Acts 1967, No. 320, § 7; A.S.A. 1947, § 82-2007.

tion Act, referred to in this section, is codified as 21 U.S.C. § 601 et seq.

U.S. Code. The Federal Meat Inspec-

20-60-215. Records.

(a) For the purpose of enforcing the provisions of this subchapter, persons engaged in this state in the business of processing for intrastate commerce or transporting, shipping, or receiving in commerce livestock slaughtered for human consumption or meat or meat food products, or holding articles so received, shall maintain the records as the Director of the Department of Health by regulation may require, showing, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, or disposition of the articles and shall, upon the request of an authorized representative of the director, permit him or her at reasonable times to have access to and to copy all the records.

(b) Any record required to be maintained by this section shall be maintained for a period of two (2) years after the transaction which is subject to the record has taken place.

History. Acts 1967, No. 320, § 9; A.S.A. 1947, § 82-2009.

SUBCHAPTER 3 — MEAT AND MEAT PRODUCTS CERTIFICATION ACT

SECTION.

20-60-301. Title.

SECTION.

20-60-302. Policy.

SECTION.

20-60-303. Regulatory authority of the Director of the Department of Health.

20-60-304. Acceptance service — Authority of meat inspectors.

SECTION.

20-60-305. Acceptance service — Availability.

20-60-306. Acceptance service — Cost.

20-60-307. Appropriations.

Effective Dates. Acts 1971, No. 468, § 10; July 1, 1971.

20-60-301. Title.

This subchapter may be cited as the “Meat and Meat Products Certification Act”.

History. Acts 1971, No. 468, § 1; A.S.A. 1947, § 82-2018.

20-60-302. Policy.

(a) Meat and meat products are purchased by numerous agencies administered and operated by the State of Arkansas. These products are procured by competitive bidding methods and in accordance with official published specifications.

(b) It is declared to be the policy of this state to grant authority to the Department of Health to provide an acceptance service designed to assure state institutional users of meat and meat products that the meats they purchase comply with the provisions and detailed specifications approved by the Office of State Procurement.

History. Acts 1971, No. 468, § 2; A.S.A. 1947, § 82-2019.

20-60-303. Regulatory authority of the Director of the Department of Health.

The Director of the Department of Health shall promulgate such rules and regulations as are necessary to carry out the purposes and provisions of this subchapter.

History. Acts 1971, No. 468, § 5; A.S.A. 1947, § 82-2022.

20-60-304. Acceptance service — Authority of meat inspectors.

(a) The acceptance service to be provided by the Department of Health is to be accomplished by employees of the state who are authorized to inspect livestock, carcasses or parts thereof, or meat food products under the provisions of the Arkansas Meat and Meat Products Inspection Act, § 20-60-201 et seq.

(b) Department meat inspectors are designated and authorized to certify as to whether or not meat and meat products conform with specification requirements cited in official purchase agreements regarding requirements such as type, class, style, weight range, state of refrigeration, required packaging, and other suitability factors.

History. Acts 1971, No. 468, § 3; A.S.A. 1947, § 82-2020.

20-60-305. Acceptance service — Availability.

The acceptance service shall be made available to all official establishments operating under the direct supervision of the Division of Environmental Health Protection of the Department of Health under the provisions of the Arkansas Meat and Meat Products Inspection Act, § 20-60-201 et seq.

History. Acts 1971, No. 468, § 4; A.S.A. 1947, § 82-2021.

20-60-306. Acceptance service — Cost.

The cost of providing the acceptance service and ensuing certification shall be borne and paid by the seller, slaughterer or processor, or vendor or merchant requesting the service at such rate as the Director of the Department of Health may determine as being necessary to defer the cost of this service.

History. Acts 1971, No. 468, § 6; A.S.A. 1947, § 82-2023.

20-60-307. Appropriations.

There is authorized to be appropriated such sums as are necessary to carry out the provisions of this subchapter.

History. Acts 1971, No. 468, § 7; A.S.A. 1947, § 82-2024.

CHAPTER 61
FISH AND SEAFOOD

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. ARKANSAS CATFISH MARKETING ACT OF 1975.
3. CATFISH — IDENTIFICATION BY RESTAURANTS.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-61-101. Foreign fish.

Effective Dates. Acts 1971, No. 367, § 6: Mar. 23, 1971. Emergency clause provided: "It is hereby found and determined by the General Assembly that many fish sold to the consuming public of this State, which are imported from foreign countries, are not properly labeled to identify the country of origin and the appropriate name of such products; that many such fish are not packaged in the country of origin in accordance with the sanitary requirements required of fish produced in this State or in this Country; and that the immediate passage of this Act is necessary to enable the consuming public to determine the country of origin from which fish are produced, and related information which will enable the purchaser thereof to take whatever actions are necessary for the protection of the health and safety of himself and the members of his family, or the public to whom any such products may be sold or offered for sale. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and

effect from and after its passage and approval."

Acts 1973, No. 519, § 2: Mar. 30, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that many fish processing plants outside this State, and in foreign countries, do not meet the sanitary requirements of processing fish as are required under the laws and regulations of this State, and that the protection of the health and safety of the people of this State require that fish packaged and processed outside this State, which is sold to consumers in this State, shall have been packaged and processed under sanitary conditions meeting at least the minimum requirements of the laws and regulations of this State for fish processing plants, and that the immediate passage of this Act is necessary to accomplish said purpose. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

20-61-101. Foreign fish.

(a) No fresh, cold storage, or frozen fish produced outside this state or in any foreign country and imported into the United States shall be sold or offered for sale in this state by any food establishment unless:

(1) The package or container containing the food bears a statement in writing naming thereon the country of origin, the date of packaging, and the common name of all fish contained therein; and

(2) The fish has been packaged and processed under sanitary conditions equal to the standards required by the laws and regulations of this state for fish processing plants.

(b)(1) Outlets serving cooked, fresh, cold storage, or frozen fish at retail which display on the menu or in some conspicuous public place in the outlet the identity of the country of origin and the common name of all fish as reflected on the menu or sold in the outlet shall be deemed as having satisfied the requirements of subdivision (a)(1) of this section.

(2) All suppliers of any fresh, cold storage, or frozen fish shall furnish to the distributor or retailer to which the products are sold in this state an affidavit that all products are properly labeled, as required in this section, with respect to the country of origin of and the contents of any foreign imported fish. This affidavit shall include a certificate that the supplier has caused each of the products to be properly labeled in conformance with the requirements of this section.

(3)(A) The Director of the Arkansas Bureau of Standards and enforcement personnel of the bureau are authorized to enforce the requirements of subsection (a) and subdivisions (b)(1) and (2) of this section.

(B) The director is authorized to promulgate rules and regulations necessary to enforce subsection (a) and subdivisions (b)(1) and (2) of this section.

(4) In addition, all suppliers of any fresh, cold storage, or frozen fish shall furnish to any distributor or retailer to which the product is sold in this state proof that the fish has been packaged and processed under sanitary conditions equal to the sanitary conditions required of fish processing plants in this state. The proof may be upon certification by the Department of Health or certification by the United States Food and Drug Administration or other appropriate federal agency that the processing plant in which the fish was packaged or processed meets sanitary conditions within at least the minimum requirements of the laws and regulations of this state for fish processing plants, or proof may be upon the certification of the supplier that the fish packaged or processed outside this state or in a foreign country was packaged or processed in a fish processing plant that meets at least the minimum requirements of the laws and regulations of this state for sanitary conditions for fish processing plants.

(c) Any supplier of fresh, cold storage, or frozen fish or any distributor or retailer who sells any fish in this state in violation of the provisions of this section shall each be individually and severally subject to the civil penalties as provided in subsection (d) of this section.

(d)(1) A violator of this section shall be assessed by the State Plant Board a civil penalty of:

(A) Not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300) for a first violation;

(B) Not less than four hundred dollars (\$400) nor more than six hundred dollars (\$600) for a second violation within three (3) years after the date of the first violation; and

(C) Not less than seven hundred dollars (\$700) nor more than one thousand dollars (\$1,000) for a third violation within three (3) years after the date of the first violation.

(2) For a violation to be considered as a second or subsequent offense, it must be a repeat violation of a requirement enumerated in subsection (a) and subdivisions (b)(1) and (2) of this section.

(3)(A) Any person subject to a civil penalty shall have a right to request an administrative hearing within ten (10) calendar days after receipt of the notice of the penalty.

(B) The board is authorized to conduct the hearing after giving appropriate notice, and its decision shall be subject to judicial review.

(4)(A) If a violator has exhausted the administrative appeals and the civil penalty is upheld, the violator shall pay the civil penalty within twenty (20) calendar days after the date of the final decision.

(B) If the violator fails to pay the penalty, a civil action may be brought by the board in any court of competent jurisdiction to recover the penalty.

(C) Any civil penalty collected under this section shall be transmitted to the State Plant Board Fund.

(e) The provisions of this section shall not be applicable to shellfish.

History. Acts 1971, No. 367, §§ 1-3; 1973, No. 519, § 1; A.S.A. 1947, §§ 82-982 — 82-984; Acts 2003, No. 1024, § 1.

SUBCHAPTER 2 — ARKANSAS CATFISH MARKETING ACT OF 1975

SECTION.

20-61-201. Title.

20-61-202. Definitions.

20-61-203. Penalties — Injunction.

20-61-204. Administration of subchapter by Director of the Arkansas Bureau of Standards.

SECTION.

20-61-205. Rules and regulations.

20-61-206. Labeling.

20-61-207. Authority to enter into certain agreements.

20-61-208. Publication of data.

20-61-209. Judicial review.

Effective Dates. Acts 1987, No. 1005, § 11: Apr. 14, 1987. Emergency clause provided: “It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1209 of the Extended Session of 1976; that this Act is a reenactment of the former law; and that the immediate

passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval.”

Acts 2015, No. 1191, § 7: Jan. 1, 2016.

20-61-201. Title.

This subchapter shall be known as the “Arkansas Catfish Marketing Act of 1975”.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 1; A.S.A. 1947, § 82-987; reen. Acts 1987, No. 1005, § 1.

20-61-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Capable of use as human food” shall mean and shall apply to any catfish, catfish-like species, or part or product of catfish or a catfish-like species unless it is denatured or otherwise identified as required by regulations prescribed by the Director of the Arkansas Bureau of Standards to deter its use as human food or unless it is naturally inedible by humans;

(2) “Catfish” means any species of the scientific family Ictaluridae;

(3) “Catfish-like” means any species of the scientific genus *Pangasius*, family Claridae, or family Siluridae;

(4) “Direct retail sale” means the sale of catfish or catfish-like products individually or in small quantities directly to the consumer;

(5) “Director” means the Director of the Arkansas Bureau of Standards;

(6) “Distributor” means any person offering for sale, exchange, or barter any catfish or catfish-like product destined for direct retail sale in Arkansas;

(7) “Label” means a display of written, printed, or graphic matter upon or affixed to the container in which a catfish or catfish-like product is offered for direct retail sale;

(8) “Labeling” means all labels and other written, printed, or graphic matter upon a catfish or catfish-like product, or any of its containers or wrappers, offered for direct retail sale;

(9) “Pay pond” means a circumscribed body of water owned by a person and operated solely for recreational fishing purposes on a commercial basis for profit;

(10) “Person” shall include any individual, partnership, corporation, and association or other legal entity;

(11) “Processor” means any person engaged in handling, storing, preparing, manufacturing, packing, or holding catfish or catfish-like products;

(12) “Producer” means any person engaged in the business of harvesting catfish or catfish-like species, by any method, intended for direct retail sale;

(13) “Product” means any catfish or catfish-like product capable of use as human food which is made wholly or in part from any catfish, catfish-like species, or portion of catfish or catfish-like species, except products which contain catfish or catfish-like species only in small proportions or which in the judgment of the director historically have not been considered by consumers as products of the commercial catfish industry and which are exempted from definition as a catfish or catfish-like product by the director under such conditions as he or she may prescribe to assure that the catfish, catfish-like species, or portions of catfish or catfish-like species contained therein are not adulterated and that the products are not represented as catfish or catfish-like products;

(14) “Product name” means the name of the catfish or catfish-like item intended for retail sale which identifies it as to kind, class, or specific use; and

(15) “Retailer” means any person offering for sale catfish or catfish-like products to individual consumers and representing the last sale before human consumption.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 3; A.S.A. 1947, § 82-989; reen. Acts 1987, No. 1005, § 3; 2003, No. 1024, §§ 2, 3; 2015, No. 1191, § 1.

A.C.R.C. Notes. Acts 2015, No. 1191, § 6, provided: “The Arkansas Bureau of Standards shall publish notice of the passage and the substance of this act on the

bureau's website within thirty (30) days of the passage of this act."

Amendments. The 2015 amendment inserted "catfish-like species", "or catfish-like", and similar language throughout

the section; substituted "of catfish or a catfish-like species" for "thereof" in (1) and present (13); and inserted present (3) and redesignated the remaining subdivisions accordingly.

20-61-203. Penalties — Injunction.

(a)(1)(A) Any person who violates any provision of this subchapter for which no civil penalty is provided by this subchapter shall upon conviction be guilty of a violation and subject to a fine of not more than five hundred dollars (\$500).

(B) However, no person shall be subject to penalties under this section for receiving for transportation any article in violation of this subchapter if the receipt was made in good faith unless the person refuses to furnish on request of a representative of the Director of the Arkansas Bureau of Standards the name and address of the person from whom he or she received the article and copies of all documents, if there are any, pertaining to the delivery of the article to him or her.

(2) All distributors, processors, wholesalers, or retailers who are distributing or selling species of fish as catfish or catfish-like that are not within the definition of "catfish" or "catfish-like" under § 20-61-202 shall be in violation of this subchapter and shall be assessed a civil penalty of:

(A) Not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for a first violation;

(B) Not less than eight hundred dollars (\$800) nor more than two thousand dollars (\$2,000) for a second violation within three (3) years after the date of the first violation; and

(C) Not less than one thousand five hundred dollars (\$1,500) nor more than two thousand five hundred dollars (\$2,500) for a third violation within three (3) years after the date of the first violation.

(3) For a violation to be considered as a second or subsequent violation, it must be a repeat of the violation in subdivision (a)(2) of this section.

(4)(A) Any person subject to a civil penalty shall have a right to request an administrative hearing within ten (10) calendar days after receipt of the notice of the penalty.

(B) The State Plant Board is authorized to conduct the hearing after giving appropriate notice, and its decision shall be subject to judicial review.

(5)(A) If a violator has exhausted the administrative appeals and the civil penalty is upheld, the violator shall pay the civil penalty within twenty (20) calendar days after the date of the final decision.

(B) If the violator fails to pay the penalty, a civil action may be brought by the board in any court of competent jurisdiction to recover the penalty.

(C) Any civil penalty collected under this section shall be transmitted to the State Plant Board Fund.

(b) Nothing in this subchapter shall be construed as requiring the director to report for prosecution or for the institution of libel or injunction proceedings any minor violations of this subchapter whenever he or she believes that the public interest will be adequately served by a suitable written notice of warning.

(c)(1) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(2) Before the director reports a violation for prosecution, an opportunity shall be given the distributor or other affected person to present his or her views to the director.

(d)(1) The director is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subchapter or any rule or regulation promulgated under this subchapter, notwithstanding the existence of other remedies at law.

(2) The injunction shall be issued without bond.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 7; A.S.A. 1947, § 82-993; reen. Acts 1987, No. 1005, § 7; 2003, No. 1024, § 4; 2005, No. 1994, § 136; 2015, No. 1191, § 2.

A.C.R.C. Notes. Acts 2015, No. 1191, § 6, provided: "The Arkansas Bureau of

Standards shall publish notice of the passage and the substance of this act on the bureau's website within thirty (30) days of the passage of this act."

Amendments. The 2015 amendment inserted "or catfish-like" twice in the introductory language of (a)(2).

20-61-204. Administration of subchapter by Director of the Arkansas Bureau of Standards.

This subchapter shall be administered by the Director of the Arkansas Bureau of Standards.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 2; A.S.A. 1947, § 82-988; reen. Acts 1987, No. 1005, § 2.

20-61-205. Rules and regulations.

(a) The Director of the Arkansas Bureau of Standards is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this subchapter.

(b)(1) Before the issuance, amendment, or repeal of any rule or regulation authorized by this subchapter, the director shall publish the proposed regulation, amendment, or notice to repeal an existing regulation in a manner reasonably calculated to give interested parties adequate notice and shall afford all interested persons an opportunity to present their views thereon, orally or in writing, within a reasonable period of time.

(2) After consideration of all views presented by interested persons, the director shall take appropriate action to issue the proposed rules or regulations or to amend or repeal an existing rule or regulation.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 6; A.S.A. 1947, § 82-992; reen. Acts 1987, No. 1005, § 6.

20-61-206. Labeling.

(a) A catfish or catfish-like product shall not be offered for direct retail sale for human consumption by a processor, distributor, or retailer unless the catfish or catfish-like product name is specifically labeled in the following manner:

(1) "FARM-RAISED CATFISH", if the product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture;

(2) "RIVER OR LAKE CATFISH", if the product has been produced in any freshwater lake, river, or stream of the state but has not been produced according to the usual and customary techniques of commercial aquaculture;

(3) "IMPORTED", provided the catfish or catfish-like species is produced from freshwater, either according to the usual and customary techniques of aquaculture, or from freshwater lakes, rivers, or streams of a country other than the United States; and

(4) "OCEAN CATFISH", provided the catfish product is produced from marine or estuarine waters in the United States.

(b) Any person selling river or lake catfish or catfish-like species exclusively and directly to the consumer may have on his or her premises a sign reasonably visible to the consumer which identifies the product as river or lake catfish or catfish-like species, rather than labeling each individual container or package of catfish or catfish-like product, as provided in subsection (a) of this section.

(c) Any retailer selling catfish or catfish-like products not wrapped or in a container may comply with this subchapter by placing a sign on the display case or refrigeration unit so that the sign is reasonably visible to the consumer, giving notice that the catfish or catfish-like species is either farm-raised catfish or catfish-like species, river or lake catfish or catfish-like species, imported catfish or catfish-like species, or ocean catfish, as the products are defined in subsection (a) of this section.

(d) Any advertising as to any catfish or catfish-like product shall state whether the catfish or catfish-like product is farm-raised catfish or catfish-like species, river or lake catfish or catfish-like species, imported catfish or catfish-like species, or ocean catfish, as defined in subsection (a) of this section.

(e) Subsections (a)-(d) of this section shall not apply to catfish or catfish-like products exported from the United States.

(f) All distributors, processors, or wholesalers of catfish or catfish-like products distributing or selling catfish or catfish-like products shall provide information to each person, firm, or corporation to whom they distribute or sell catfish or catfish-like products for resale as to whether the catfish or catfish-like product is farm-raised catfish or catfish-like species, river or lake catfish or catfish-like species, imported catfish or

catfish-like species, or ocean catfish, as these terms are defined in subsection (a) of this section.

History. Acts 1975 (Extended Sess., 1976), No. 1209, §§ 4, 5; A.S.A. 1947, §§ 82-990, 82-991; reen. Acts 1987, No. 1005, §§ 4, 5; 2015, No. 1191, § 3.

A.C.R.C. Notes. Acts 2015, No. 1191, § 6, provided: "The Arkansas Bureau of Standards shall publish notice of the passage and the substance of this act on the bureau's website within thirty (30) days of

the passage of this act."

Amendments. The 2015 amendment inserted "or catfish-like" and "or catfish-like species" throughout the section; in the introductory language of (a), substituted "A catfish" for "No catfish" and inserted "not"; deleted "Catfish" following "Imported" in (a)(3); and added "in the United States" in (a)(4).

20-61-207. Authority to enter into certain agreements.

The Director of the Arkansas Bureau of Standards may cooperate with and enter into agreements with governmental agencies of this state, agencies of the United States Government, and private associations in order to carry out the purpose and provisions of this subchapter.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 8; A.S.A. 1947, § 82-994; reen. Acts 1987, No. 1005, § 8.

20-61-208. Publication of data.

The Director of the Arkansas Bureau of Standards shall publish at least biannually, in such form as he or she may deem proper, information concerning the sale of catfish or catfish-like products, together with such data about their production and use as he or she may consider advisable, provided that the information concerning production and sales of catfish or catfish-like products shall not disclose the operation of any person.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 9; A.S.A. 1947, § 82-995; reen. Acts 1987, No. 1005, § 9; 2015, No. 1191, § 4.

A.C.R.C. Notes. Acts 2015, No. 1191, § 6, provided: "The Arkansas Bureau of

Standards shall publish notice of the passage and the substance of this act on the bureau's website within thirty (30) days of the passage of this act."

Amendments. The 2015 amendment inserted "or catfish-like" twice.

20-61-209. Judicial review.

(a) Any person adversely affected by an act, order, or ruling made by the Director of the Arkansas Bureau of Standards pursuant to the provisions of this subchapter may, within forty-five (45) days thereafter, bring action in the Pulaski County Circuit Court for judicial review of the actions.

(b) The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies or, in the absence or inadequacy thereof, any applicable form of legal action including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

History. Acts 1975 (Extended Sess., 1976), No. 1209, § 7; A.S.A. 1947, § 82-993; reen. Acts 1987, No. 1005, § 7.

SUBCHAPTER 3 — CATFISH — IDENTIFICATION BY RESTAURANTS

SECTION.

20-61-301. Penalty — Injunction.
20-61-302. Identification required.
20-61-303. Administration of subchapter
by Director of the Arkansas
Bureau of Standards.

SECTION.

20-61-304. Rules and regulations.
20-61-305. Judicial review.

Cross References. Food service establishments, § 20-57-201 et seq.

Effective Dates. Acts 1981, No. 77, § 7: Feb. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is in the public interest that eating establishments which offer catfish to the public should indicate on the menu the type of catfish

offered, and that this Act is immediately necessary to so provide. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2015, No. 1191, § 7: Jan. 1, 2016.

20-61-301. Penalty — Injunction.

(a) Any person who knowingly violates any provision of this subchapter for which no civil penalty is provided by this subchapter shall upon conviction be guilty of a violation and subject to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500) for the second and subsequent offenses.

(b) Nothing in this subchapter shall be construed as requiring the Director of the Arkansas Bureau of Standards to report for prosecution or for the institution of libel or injunction proceedings any minor violations of this subchapter whenever he or she believes that the public interest will be adequately served by a suitable written notice of warning.

(c)(1) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(2) Before the director reports a violation for prosecution, an opportunity shall be given the affected person to present his or her views to the director.

(d)(1) The director is authorized to apply for and the court is authorized to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this subchapter or any rule or regulation promulgated under this subchapter, notwithstanding the existence of other remedies at law.

(2) The injunction shall be issued without bond.

History. Acts 1981, No. 77, § 4; A.S.A. 1947, § 82-995.4; Acts 2005, No. 1994, § 137.

20-61-302. Identification required.

(a) A catfish or catfish-like product shall not be offered for direct retail sale for human consumption by a restaurant or other eating establishment unless the catfish or catfish-like product name is identified on the menu in the following manner:

(1) “Farm-Raised Catfish”, if the product has been specifically produced in fresh water according to the usual and customary techniques of commercial aquaculture;

(2) “River or Lake Catfish”, if the product has been produced in any freshwater lake, river, or stream of the state, but has not been produced according to the usual and customary techniques of commercial aquaculture;

(3)(A) “Imported”, if the catfish or catfish-like product is produced from fresh water, either according to the usual and customary techniques of aquaculture, in or from freshwater lakes, rivers, or streams of a country other than the United States.

(B) The label “Imported” shall be identified on the menu next to the fish offered for sale in a similar type size and font as the fish offered for sale; and

(4) “Ocean Catfish”, if the catfish product is produced from marine or estuarine waters in the United States.

(b) A restaurant serving a catfish or catfish-like product that is required to be labeled as “Imported”, upon the request of the customer, shall disclose the specific source of the catfish or catfish-like product.

(c) As used in this subchapter, “catfish” and “catfish-like” mean the same as defined under the Arkansas Catfish Marketing Act of 1975, § 20-61-201 et seq.

History. Acts 1981, No. 77, § 1; A.S.A. 1947, § 82-995.1; Acts 2003, No. 1024, § 5; 2015, No. 1191, § 5.

A.C.R.C. Notes. Acts 2015, No. 1191, § 6, provided: “The Arkansas Bureau of Standards shall publish notice of the passage and the substance of this act on the bureau’s website within thirty (30) days of the passage of this act.”

Amendments. The 2015 amendment,

in the introductory language of (a), substituted “A catfish” for “No catfish”, inserted “not”, and inserted “or catfish-like” twice; inserted designation (a)(3)(A); in (a)(3)(A), deleted “Catfish” following “Imported” and inserted “or catfish-like”; added (a)(3)(B); added “in the United States” in (a)(4); redesignated and rewrote former (b)(1) and (b)(2) as (b); and substituted “and ‘catfish-like’ mean” for “means” in (c).

20-61-303. Administration of subchapter by Director of the Arkansas Bureau of Standards.

This subchapter shall be administered and enforced by the Director of the Arkansas Bureau of Standards.

History. Acts 1981, No. 77, § 2; A.S.A. 1947, § 82-995.2.

20-61-304. Rules and regulations.

The Director of the Arkansas Bureau of Standards is authorized to promulgate such rules and regulations as may be necessary for the efficient enforcement of this subchapter.

History. Acts 1981, No. 77, § 3; A.S.A. 1947, § 82-995.3.

20-61-305. Judicial review.

(a) Any person adversely affected by an act, order, or ruling made by the Director of the Arkansas Bureau of Standards pursuant to the provisions of this subchapter may, within forty-five (45) days thereafter, bring action in the circuit court of the county wherein the violation occurred for judicial review of the action.

(b) The form of the proceeding shall be any which may be provided by statutes of this state to review decisions of administrative agencies or, in the absence or inadequacy thereof, any applicable form of legal action including actions for declaratory judgments or writs of prohibitory or mandatory injunctions.

History. Acts 1981, No. 77, § 4; A.S.A. 1947, § 82-995.4.

CHAPTER 62

POISONS

SECTION.

20-62-101. Labels on certain drugs required.

SECTION.

20-62-102. Sales of strychnine restricted.

Cross References. Emergency poison control, § 20-13-501 et seq.

Pesticide regulation, § 20-20-201 et seq.

Poison labeling requirements, § 17-92-

411.

Records of poison sales, § 17-92-410.

Effective Dates. Acts 1899, No. 147, § 6: effective 30 days after passage.

20-62-101. Labels on certain drugs required.

(a) It shall be unlawful to sell at retail arsenic and its compounds, strychnine and its salts, corrosive sublimate, hydrocyanic acid, phosphorus, opium, morphine, laudanum, or any preparation of opium containing over two (2) grains to the ounce without the container's being plainly labeled in English with the name of the article, the name of the seller, and the word "POISON".

(b) Any person who violates any of the provisions of this section shall be guilty of a violation and upon conviction be sentenced to pay a fine of

not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) for each offense.

History. Acts 1899, No. 147, §§ 3, 4, p. Dig., §§ 10858, 10859; A.S.A. 1947, §§ 82-268; C. & M. Dig., §§ 8282c, 8282d; Pope's 942, 82-943; Acts 2005, No. 1994, § 138.

20-62-102. Sales of strychnine restricted.

(a) It shall be unlawful for any person in the State of Arkansas to sell or give away or for any person to buy or accept a gift of any strychnine or its salts except upon prescription therefor of a licensed physician, dentist, or veterinarian, or where purchased for use by a licensed pest control operator.

(b)(1) Any person in this state selling or giving away any strychnine or its salts as authorized in subsection (a) of this section shall keep a record for not less than two (2) years, in a book provided for that purpose, of the date of the sale or gift, the quantity thereof, the name of the person making the sale or gift, and the signature and address of the person making the purchase or receiving the gift.

(2) If the purchaser is a person who is not known to the seller of any strychnine or its salts, the seller shall require such identification of the purchaser as may be necessary to determine the true name and address of the purchaser.

(c) Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed two hundred dollars (\$200) or imprisoned not more than thirty (30) days, or be both fined and imprisoned.

History. Acts 1959, No. 41, §§ 1, 2; A.S.A. 1947, §§ 82-955, 82-956.

CHAPTER 63

CONTRACEPTIVES

SECTION.

20-63-101 — 20-63-108. [Repealed.]

20-63-101 — 20-63-108. [Repealed.]

Publisher's Notes. This chapter, concerning contraceptives, was repealed by Acts 1999, No. 105, §§ 18-25. The chapter was derived from the following sources:

20-63-101. Acts 1943, No. 189, § 10; A.S.A. 1947, § 82-953.

20-63-102. Acts 1943, No. 189, § 1; A.S.A. 1947, § 82-944.

20-63-103. Acts 1943, No. 189, §§ 2-4; A.S.A. 1947, §§ 82-945 — 82-947.

20-63-104. Acts 1943, No. 189, § 8;

A.S.A. 1947, § 82-951; Acts 1991, No. 1180, § 1.

20-63-105. Acts 1943, No. 189, § 9; A.S.A. 1947, § 82-952.

20-63-106. Acts 1943, No. 189, § 5; A.S.A. 1947, § 82-948.

20-63-107. Acts 1943, No. 189, § 7; A.S.A. 1947, § 82-950.

20-63-108. Acts 1943, No. 189, §§ 6, 11; A.S.A. 1947, §§ 82-949, 82-954.

CHAPTER 64

ALCOHOL AND DRUG ABUSE

SUBCHAPTER.

1. GENERAL PROVISIONS.
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RESEARCH REFERENCES

ALR. Druggist's civil liability for injuries sustained as result of negligence in incorrectly filling drug prescriptions. 3 A.L.R.4th 270.

State and local administrative inspection of and administrative warrants to search pharmacies. 29 A.L.R.4th 264.

Liability of manufacturer or seller for injury or death allegedly caused by use of

contraceptive. 54 A.L.R.5th 1.

Civil liability of pharmacists or druggists for failure to warn of potential drug interactions in use of prescription drug. 79 A.L.R.5th 409.

Am. Jur. 25 Am. Jur. 2d, Drugs, § 18 et seq.

C.J.S. 28 C.J.S. Drugs, § 14 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-64-101. Use and possession of narcotic drugs by certain institutions and druggists.
- 20-64-102. Narcotic drugs in safe, locked receptacle.

SECTION.

- 20-64-103. [Repealed.]
- 20-64-104. Service of search warrant.

A.C.R.C. Notes. Acts 1995, No. 551, § 4, provided: "The Highway Safety Program Advisory Council Created by Arkansas Code 12-6-101 is transferred to the Arkansas Alcohol and Drug Abuse Coordinating Council pursuant to a type 3 transfer as defined in Arkansas Code 25-2-106."

Acts 1995, No. 551, § 5, provided: "The Arkansas Alcohol and Drug Abuse Authority of the Bureau of Alcohol and Drug Abuse Prevention, Arkansas Department

of Health is transferred to the Arkansas Alcohol and Drug Abuse Coordinating Council pursuant to a type 3 transfer as defined in Arkansas Code 25-2-106."

Cross References. Uniform Controlled Substances Act, § 5-64-101 et seq.

Effective Dates. Acts 1923, No. 596, § 3; Mar. 22, 1923. Emergency clause provided: "This act being necessary for the immediate preservation of the public health, peace and safety, an emergency is

hereby declared to exist, and this act shall take effect and be in force from and after its passage.”

Acts 1971, No. 265, § 3: Mar. 12, 1971. Emergency clause provided: “It is hereby found and determined by the General Assembly that the present laws of this State relating to the issuance of search warrants relating to offenses involving drugs regulated under the Arkansas Uniform Narcotic Drug Act are totally inadequate and that it is essential to the peace and well-being of the citizens of this State that

legislation be enacted immediately to permit the issuance of search warrants relating to such offenses, by a judge of the circuit or municipal court at any time during the day or night, upon probable cause shown and that this Act is immediately necessary to provide such authority. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

20-64-101. Use and possession of narcotic drugs by certain institutions and druggists.

It shall be lawful for eleemosynary institutions, sanatoriums, hospitals, and wholesale druggists having licensed pharmacists in their employ to possess, use, compound, and sell narcotic drugs pursuant to the Federal Narcotic Act and the rules and regulations thereto appertaining.

History. Acts 1923, No. 596, § 1; Pope’s Dig., § 4623; A.S.A. 1947, § 82-1024. **U.S. Code.** The Federal Narcotic Act referred to in this section was codified in the 1939 Internal Revenue Code, which has been completely revised.

20-64-102. Narcotic drugs in safe, locked receptacle.

- (a) Any apothecary who is authorized to posses narcotic drugs as defined by the Uniform Narcotic Drug Act, § 20-64-201 et seq., shall keep the narcotic drugs in a safe, or other receptacle equipped with a lock, sufficient to secure the narcotic drugs against theft.
- (b) Any person who violates this section shall be punished as provided by § 20-64-220.

History. Acts 1961, No. 419, §§ 1, 2; A.S.A. 1947, §§ 82-1025, 82-1026.

CASE NOTES

Cited: Ark. State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971).

20-64-103. [Repealed.]

Publisher’s Notes. This section, concerning professional use of THC for cancer patients, was repealed by Acts 1987, No. 52, § 2. The section was derived from Acts 1981, No. 8, §§ 1, 2; A.S.A. 1947, §§ 82-1007.1, 82-1007.2.

20-64-104. Service of search warrant.

A search warrant relating to offenses involving drugs regulated under the Uniform Narcotic Drug Act, § 20-64-201 et seq., and the Arkansas Drug Abuse Control Act, § 20-64-301 et seq., may be served at any time of the day or night if the judge of the district or circuit court issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant and for its service at that time.

History. Acts 1971, No. 265, § 1; A.S.A. 1947, § 82-1068.

SUBCHAPTER 2 — UNIFORM NARCOTIC DRUG ACT

SECTION.

- 20-64-201. Definitions.
- 20-64-202. Acts prohibited.
- 20-64-203. Manufacturers and wholesalers.
- 20-64-204. Qualification for licenses.
- 20-64-205. Sale on written orders.
- 20-64-206. Sales by apothecaries.
- 20-64-207. Professional use of narcotic drugs.
- 20-64-208. Preparations exempted.
- 20-64-209. Records to be kept.
- 20-64-210. Labels.
- 20-64-211. Authorized possession of narcotic drugs by individuals.
- 20-64-212. Persons and corporations exempted.
- 20-64-213. Common nuisances.
- 20-64-214. Narcotic drugs to be delivered to state official, etc.

SECTION.

- 20-64-215. Notice of conviction to be sent to licensing board.
- 20-64-216. Records confidential.
- 20-64-217. Fraud or deceit.
- 20-64-218. Exceptions and exemptions not required to be negatived.
- 20-64-219. Enforcement and cooperation.
- 20-64-220. Penalties.
- 20-64-221. Effect of acquittal or conviction under federal narcotic laws.
- 20-64-222. Constitutionality.
- 20-64-223. Interpretation.
- 20-64-224. Inconsistent laws repealed.
- 20-64-225. Name of act.
- 20-64-226. [Reserved.]

A.C.R.C. Notes. Acts 2013, No. 1331 amended §§ 20-64-201; 20-64-210; 20-64-217, making changes to the uniform language.

Publisher's Notes. For Comments regarding the Uniform Narcotic Drug Act, see Commentaries Volume B.

Cross References. Uniform Controlled Substances Act, § 5-64-101 et seq.

Preambles. Acts 1941, No. 324 contained a preamble which read: "Whereas, the supply of opium and coca leaves in the United States is imported and the present world crisis is making the securing of these products increasingly difficult, and,

"Whereas, because of the importance of these products to this Nation in times of national peril, the National Conference of Commissioners on Uniform State Laws, the American Bar Association and the

Bureau of Narcotics have requested passage of the following Act, and,

"Whereas, the General Assembly, desiring to cooperate fully in the present national defense program, the above recommendations are accepted..."

Effective Dates. Acts 1941, No. 324, § 8: approved Mar. 26, 1941. Emergency clause provided: "Because of the importance of conserving certain important drugs necessary to the health of the nation, this act is found to be necessary for the preservation of the public peace, health and safety, an emergency is declared to exist and this act shall be in full force and effect from and after its passage."

Acts 1955, No. 155, § 6: Mar. 8, 1955. Emergency clause provided: "Because of the importance of conserving important

drugs necessary to the health of the nation, and because of the necessity of preventing indiscriminate preparation, distribution, and use of many newly discovered synthetic compounds neither chemically nor physically distinguishable from narcotic drugs, and in order to benefit from the recent Federal amendment of the Harrison Narcotics Act (the Codeine Act), it has been found and is declared by the General Assembly of Arkansas that there is urgent need for the preceding amendments to the Arkansas Uniform Narcotics Act. Therefore an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval."

Acts 1963, No. 113, § 3: Feb. 28, 1963. Emergency clause provided: "It has been

found and declared by the General Assembly that the punishment of certain offenses involving non-prescription drugs under Act 344, Ark. Acts of 1937, as amended, as felonies is unnecessarily harsh and results in extreme difficulty in enforcement; that the aforesaid offenses should be punished as misdemeanors; that there is an urgent need to alter the existing situation; and that enactment of this measure will provide the needed remedy. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public peace, health, and safety, shall take effect and be in force from the date of its approval."

Acts 1975, No. 928, § 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

RESEARCH REFERENCES

Am. Jur. 25 Am. Jur. 2d, Drugs, § 18 et seq.

Ark. L. Rev. The Arkansas Uniform Narcotics Act, 9 Ark. L. Rev. 406.

Marijuana Laws: A Need for Reform, 22 Ark. L. Rev. 359.

C.J.S. 28 C.J.S., Drugs, § 210 et seq.

CASE NOTES

Cited: Pope v. State, 216 Ark. 314, 225 S.W.2d 8 (1949); Crutchfield v. State, 251 Ark. 137, 471 S.W.2d 361 (1971); Hosto v.

Brickell, 265 Ark. 147, 577 S.W.2d 401 (1979).

20-64-201. Definitions.

The following words and phrases, as used in this subchapter, shall have the following meanings, unless the context otherwise requires:

(1) "Apothecary" means a licensed pharmacist as defined by the laws of this state and, where the context so requires, the owner of a store or other place of business where narcotic drugs are compounded or dispensed by a licensed pharmacist; but nothing in this subchapter shall be construed as conferring on a person who is not registered nor licensed as a pharmacist any authority, right, or privilege that is not granted to him by the pharmacy laws of this state;

(2) "Dentist" means a person authorized by law to practice dentistry in this state;

(3) "Dispense" includes distribute, leave with, give away, dispose of, or deliver;

(4) "Federal narcotic laws" means the laws of the United States relating to opium, coca leaves, and other narcotic drugs;

(5) "Hospital" means an institution for the care and treatment of the sick and injured, approved by the Director of the Department of Health as proper to be entrusted with the custody of narcotic drugs and the professional use of narcotic drugs under the direction of a physician, dentist, or veterinarian;

(6) "Laboratory" means a laboratory approved by the Director of the Department of Health as proper to be entrusted with the custody of narcotic drugs and the use of narcotic drugs for scientific and medical purposes and for purposes of instruction;

(7) "Manufacturer" means a person who, by compounding, mixing, cultivating, growing, or other process, produces or prepares narcotic drugs, but does not include an apothecary who compounds narcotic drugs to be sold or dispensed on prescriptions;

(8)(A) "Narcotic drug" means any drug which is defined as a narcotic drug by order of the Director of the Department of Health. In the formulation of definitions of narcotic drugs, the Director of the Department of Health is directed to include all drugs which he finds are narcotic in character and by reason thereof are dangerous to the public health or are promotive of addiction-forming or addiction-sustaining results upon the user which threaten harm to the public health, safety, or morals. In formulating these definitions, the Director of the Department of Health shall take into consideration the provisions of the federal narcotic laws as they exist, from time to time, and shall amend the definitions so as to keep them in harmony with the definitions prescribed by the federal narcotic laws, so far as is possible under the standards established in this subdivision (8)(A), and under the policy of this subchapter.

(B) "Narcotic drug" also means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(i) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. This term does not include the isoquinoline alkaloids of opium;

(ii) Poppy straw and concentrate of poppy straw;

(iii) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(iv) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(v) Ecgonine, its derivatives, their salts, isomers, and salts of isomers;

(vi) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subdivisions (8)(B)(i)-(v) of this section;

(9)(A) "Official written order" means an order written on a form provided for that purpose by the Director of the Drug Enforcement

Administration under the laws of the United States making provision therefor, if order forms are authorized and required by federal law and, if an order form is not provided, then on an official form provided for that purpose by the Director of the Department of Health.

(B) When permitted by federal law, an official written order may also be written and submitted electronically;

(10) "Person" includes any corporation, association, copartnership, or one (1) or more individuals;

(11) "Physician" means a person authorized by law to practice medicine in this state and any other person authorized by law to treat sick and injured human beings in this state and to use narcotic drugs in connection with such treatment;

(12) "Registry number" means the number assigned to each person registered under the federal narcotic laws;

(13) "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee;

(14) "Veterinarian" means a person authorized by law to practice veterinary medicine in this state;

(15) "Wholesaler" means a person who supplies narcotic drugs that he himself has not produced nor prepared, on official written orders, but not on prescriptions; and

(16) "Written prescription" means a prescription that is presented to an apothecary in compliance with federal law and regulations, including a written, oral, faxed, or electronic prescription.

History. Acts 1937, No. 344, § 1; Pope's Dig., §§ 4615, 10126; Acts 1941, No. 324, §§ 1, 2; 1955, No. 155, § 1; 1959, No. 250, § 1; 1965, No. 409, § 1; A.S.A 1947, § 82-1001; Acts 1987, No. 42, § 1; 2013, No. 1331, §§ 4, 5.

Amendments. The 2013 amendment added the (9)(A) designation; in (9)(A),

substituted "the laws" for "any laws" and "if order forms are authorized and required by federal law and, if an order form is not provided" for "if such order forms are authorized and required by federal law and, if no such order form is provided"; and added (9)(B) and (16).

CASE NOTES

ANALYSIS

Cannabis.
Narcotic Drugs.

Cannabis.

Where court had been given instruction that state was required to prove beyond a reasonable doubt that the defendant possessed parts of the plant, other than non-narcotic parts described in this section, it was not error for the trial court to refuse a requested instruction that only portions of

the plant cannabis sativa are classified as a narcotic drug. *Peters v. State*, 248 Ark. 134, 450 S.W.2d 276 (1970).

Narcotic Drugs.

In a prosecution for illegal possession of narcotics, in which evidence showed the defendant to have possessed marijuana, it was not error to exclude testimony of a physician that marijuana is not a narcotic. *Brown v. State*, 248 Ark. 561, 453 S.W.2d 50 (1970).

Cited: *Hales v. State*, 299 Ark. 93, 771 S.W.2d 285 (1989).

20-64-202. Acts prohibited.

It shall be unlawful for any person to manufacture, purchase, possess, have under his control, sell, prescribe, administer, dispense, or compound any narcotic drug, except as authorized in this subchapter.

History. Acts 1937, No. 344, § 2; Pope's Dig., § 10127; Acts 1965, No. 409, § 2; A.S.A 1947, § 82-1002.

CASE NOTES**Possession.**

Mere possession of the narcotics, with certain exceptions, was unlawful, although the possession was not for the purpose of sale, barter or exchange. *Starr v. State*, 165 Ark. 511, 265 S.W. 54 (1924) (decision under prior law).

Cited: *Perez v. State*, 249 Ark. 1111, 463 S.W.2d 394 (1971); *Hosto v. Brickell*, 265 Ark. 147, 577 S.W.2d 401 (1979); *Hales v. State*, 299 Ark. 93, 771 S.W.2d 285 (1989).

20-64-203. Manufacturers and wholesalers.

No person shall manufacture, compound, mix, cultivate, grow, or by any other process produce or prepare narcotic drugs, and no person as a wholesaler shall supply the same, without having first obtained a license so to do from the Director of the Department of Health.

History. Acts 1937, No. 344, § 3; Pope's Dig., § 10128; A.S.A. 1947, § 82-1003.

20-64-204. Qualification for licenses.

No license shall be issued under § 20-64-203 unless and until the applicant therefor has furnished proof satisfactory to the Director of the Department of Health:

(a) That the applicant is of good moral character or, if the applicant be an association or corporation, that the managing officers are of good moral character;

(b) That the applicant is equipped as to land, buildings, and paraphernalia properly to carry on the business described in his application.

No license shall be granted to any person who has within five (5) years been convicted of a willful violation of any law of the United States, or of any state, relating to opium, coca leaves, or other narcotic drugs, or to any person who is a narcotic drug addict.

The director may suspend or revoke any license for cause.

History. Acts 1937, No. 344, § 4; Pope's Dig., § 10129; A.S.A. 1947, § 82-1004.

20-64-205. Sale on written orders.

(1) A duly licensed manufacturer or wholesaler may sell and dispense narcotic drugs to any of the following persons, but only on official written orders:

- (a) To a manufacturer, wholesaler, or apothecary;
- (b) To a physician, dentist, or veterinarian;
- (c) To a person in charge of a hospital, but only for use by or in that hospital;
- (d) To a person in charge of a laboratory, but only for use in that laboratory for scientific and medical purposes.

(2) A duly licensed manufacturer or wholesaler may sell narcotic drugs to any of the following persons:

- (a) On a special written order accompanied by a certificate of exemption, as required by the federal narcotic laws, to a person in the employ of the United States Government or of any state, territorial, district, county, municipal, or insular government, purchasing, receiving, possessing, or dispensing narcotic drugs by reason of his official duties;
- (b) To a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or to a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or to a retired commissioned medical officer of the Army, the Navy, or the Public Health Service employed upon such ship or aircraft, for the actual medical needs of persons on board of such ship or aircraft, when not in port. Provided: Such narcotic drugs shall be sold to the master of such ship or person in charge of such aircraft or to a physician, surgeon, or retired commissioned medical officer of the Army, the Navy, or the Public Health Service employed upon such ship or aircraft only in pursuance of a special order form approved by a commissioned medical officer or acting assistant surgeon of the Public Health Service;

(c) To a person in a foreign country if the provisions of the federal narcotic laws are complied with.

(3) **USE OF OFFICIAL WRITTEN ORDERS.** An official written order for any narcotic drug shall be signed in quadruplicate by the person giving said order or his duly authorized agent. The original shall be presented to the person who sells or dispenses the narcotic drug or drugs named therein, and one (1) copy shall be sent to the Director of the Department of Health not later than the 10th of the month following the month during which the order was made. In event of the acceptance of such order by said person, each party to the transaction shall preserve his copy of such order for a period of two (2) years in such a way as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this subchapter. It shall be deemed a compliance with this subsection if the parties to the transaction have complied with the federal narcotic laws, respecting the requirements governing the use of order forms, and the purchaser has sent a signed copy of the order to the director as aforesaid.

(4) **POSSESSION LAWFUL.** Possession of or control of narcotic drugs obtained as authorized by this section shall be lawful if in the regular course of business, occupation, profession, employment, or duty of the possessor.

(5) A person in charge of a hospital or of a laboratory, or in the employ of this state or of any other state, or of any political subdivisions thereof, or a master of a ship or a person in charge of any aircraft upon which no physician is regularly employed, or a physician or surgeon duly licensed in some state, territory, or the District of Columbia, to practice his profession, or a retired commissioned medical officer of the Army, the Navy, or the Public Health Service employed upon such ship or aircraft who obtains narcotic drugs under the provisions of this section or otherwise, shall not administer nor dispense nor otherwise use such drugs, within this state, except within the scope of his employment or official duty, and then only for scientific or medicinal purposes and subject to the provisions of this subchapter.

History. Acts 1937, No. 344, § 5; Pope's 1961, No. 417, § 1; A.S.A. 1947, § 82-Dig., § 10130; Acts 1941, No. 324, §§ 3, 4; 1005.

CASE NOTES

Cited: Ark. State Medical Bd. v. Grimmer, 250 Ark. 1, 463 S.W.2d 662 (1971).

20-64-206. Sales by apothecaries.

(1) An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription or an oral prescription in pursuance to regulations, promulgated by the Director of the Department of Health under authority of § 20-64-219, of a physician, dentist, or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal narcotic laws of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of two (2) years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of this subchapter. The prescription must not be refilled.

(2) The legal owner of any stock of narcotic drugs in a pharmacy, upon discontinuance of dealing in said drugs, may sell said stock to a manufacturer, wholesaler, or apothecary, but only on an official written order.

(3) An apothecary, only upon an official written order, may sell to a physician, dentist, or veterinarian, in quantities not exceeding one (1)

ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty percent (20%) of the complete solution, to be used for medical purposes.

History. Acts 1937, No. 344, § 6; Pope’s § 2; 1965, No. 409, § 3; A.S.A. 1947, § 82-Dig., §§ 4616, 10131; Acts 1955, No. 155, 1006.

RESEARCH REFERENCES

Ark. L. Rev. Legal Control of Business in Arkansas, 5 Ark. L. Rev. 137.

CASE NOTES

Cited: Hosto v. Brickell, 265 Ark. 147, 577 S.W.2d 401 (1979).

20-64-207. Professional use of narcotic drugs.

- (1) PHYSICIANS AND DENTISTS. A physician or a dentist, in good faith and in the course of his professional practice only, may prescribe, administer, and dispense narcotic drugs, or he may cause the same to be administered by a nurse or intern under his direction and supervision.
- (2) VETERINARIANS. A veterinarian, in good faith and in the course of his professional practice only, and not for use by a human being, may prescribe, administer, and dispense narcotic drugs, and he may cause them to be administered by an assistant or orderly under his direction and supervision.
- (3) RETURN OF UNUSED DRUGS. Any person who has obtained from a physician, dentist, or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, or veterinarian, shall return to such physician, dentist, or veterinarian any unused portion of such drug, when it is no longer required by the patient.

History. Acts 1937, No. 344, § 7; Pope’s Dig., § 10132; A.S.A. 1947, § 82-1007.

CASE NOTES

Cited: Hales v. State, 299 Ark. 93, 771 S.W.2d 285 (1989).

20-64-208. Preparations exempted.

- (a) Except as otherwise in this subchapter specifically provided, this subchapter shall not apply to the following cases:
 - (1) Administering, dispensing, or selling at retail any drug subject to this subchapter under any circumstances that the Director of the Department of Health determines, after reasonable notice and opportunity for hearing, not to be dangerous to the public health, or promotive of addiction-forming or addiction-sustaining results upon the

user, or harmful to the public health, safety, or morals, and by order so proclaims. In arriving at his determination, the Director of the Department of Health shall consult with the Drug Enforcement Administration of the Treasury Department of the United States and give due weight to its investigations and determinations;

(2) Administering, dispensing, or selling at retail any medicinal preparation that contains in one (1) fluid ounce, or if a solid or semisolid preparation, in one (1) avoirdupois ounce, not more than one (1) grain of codeine or of any of its salts. The exemptions authorized by this subdivision (a)(2) are subject to the following conditions:

(A) That the medicinal preparation administered, dispensed, or sold contains, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone; and

(B) That the preparation is administered, dispensed, purchased, and sold in good faith as a medicine and not for the purpose of evading the provisions of this subchapter.

(b) Nothing in this section shall limit the quantity of codeine or of any of its salts that may be prescribed, administered, dispensed, or sold to any person or for the use of any person or animal, when it is prescribed, administered, dispensed, or sold, in compliance with the general provisions of this subchapter.

History. Acts 1937, No. 344, § 8; Pope's Dig., § 10133; Acts 1941, No. 324, § 5; 1955, No. 155, § 3; 1959, No. 250, § 2; 1965, No. 409, § 4; A.S.A. 1947, § 82-1008.

Publisher's Notes. As originally en-

acted this section referred to the Bureau of Narcotics. However, Reorg. Plan No. 2 of 1973, eff. July 1, 1973, 38 Fed. Reg. 15932, 87 Stat. 1091, transferred the duties to the Drug Enforcement Administration.

20-64-209. Records to be kept.

(1) PHYSICIANS, DENTISTS, VETERINARIANS, AND OTHER AUTHORIZED PERSONS.

Every physician, dentist, veterinarian, or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed, or professionally used by him otherwise than by prescription. It shall, however, be deemed a sufficient compliance with this subdivision (1) if any such person using small quantities of solutions or other preparation of such drugs for local application shall keep a record of the quantity, character, and potency of such solution or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping record of the amount of such solution or other preparation applied by him to individual patients.

(2) MANUFACTURERS AND WHOLESALERS. Manufacturers and wholesalers shall keep records of all narcotic drugs compounded, mixed, cultivated, grown, or by any other process produced or prepared, and of all narcotic drugs received and disposed of by them, in accordance with the provisions of subdivision (5) of this section.

(3) **APOTHECARIES.** Apothecaries shall keep records of all narcotic drugs received and disposed of by them, in accordance with the provisions of subdivision (5) of this section.

(4) **VENDORS OF EXEMPTED PREPARATIONS.** Every person who purchases for resale, or who sells narcotic drug preparations exempted by § 20-64-208, shall keep a record showing the quantities and kinds thereof received and sold, or disposed of otherwise, in accordance with the provisions of subdivision (5) of this section.

(5) **FORM AND PRESERVATION OF RECORDS.** The form of records shall be prescribed by the Director of the Department of Health. The record of narcotic drugs received shall in every case show the date of receipt, the name and address of the person from whom received, and the kind and quantity of drugs received; the kind and quantity of narcotic drugs produced or removed from process of manufacturer, and the date of such production or removal from process of manufacturer; and the record shall in every case show the proportion of morphine, cocaine, or ecgonine contained in or producible from crude opium or coca leaves received or produced. The record of all narcotic drugs sold, administered, dispensed, or otherwise disposed of shall show the date of selling, administering, or dispensing, the name and address of the person to whom, or for whose use, or the owner and species of animal for which the drugs were sold, administered, or dispensed, and the kind and quantity of drugs. Every such record shall be kept for a period of two (2) years from the date of the transaction recorded. The keeping of a record required by or under the federal narcotic laws, containing substantially the same information as is specified above, shall constitute compliance with this section, except that every such record shall contain a detailed list of narcotic drugs lost, destroyed, or stolen, if any, the kind and quantity of such drugs, and the date of the discovery of such loss, destruction, or theft.

(6) **RECORDS OF PURCHASERS FOR RESALE.** Every person who purchases cannabis for resale should keep a record of its date of receipt, name and address of the person for whom received, and the proportion of resin contained in or producible from the plant cannabis sativa L., received or produced.

History. Acts 1937, No. 344, § 9; Pope's 1965, No. 409, § 5; A.S.A. 1947, § 82-Dig., § 10134; Acts 1941, No. 324, § 6; 1009.

CASE NOTES

Evidence.

Testimony of an employee of the State Board of Health, was sufficient, in the absence of the production of the required record by physician, to sustain a finding of

violation of this section. Ark. State Medical Bd. v. Grimmer, 250 Ark. 1, 463 S.W.2d 662 (1971).

Cited: Hosto v. Brickell, 265 Ark. 147, 577 S.W.2d 401 (1979).

20-64-210. Labels.

(1) Whenever a manufacturer sells or dispenses a narcotic drug, and whenever a wholesaler sells or dispenses a narcotic drug in a package prepared by him or her, he or she shall securely affix to each package in which that drug is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of narcotic drug contained therein. No person, except an apothecary for the purpose of filling a prescription under this subchapter, shall alter, deface, or remove any label so affixed.

(2)(A) When an apothecary sells or dispenses a narcotic drug on a prescription issued by a physician, dentist, or veterinarian, he or she shall affix to the container in which the drug is sold or dispensed a label showing:

(i) His or her own name, address, and registry number, or the name, address, and registry number of the apothecary for whom he or she is lawfully acting;

(ii) The name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal;

(iii) The name, address, and registry number of the physician, dentist, or veterinarian from whom the prescription was prescribed; and

(iv) The directions for the use of the prescription.

(B) A person shall not alter, deface, or remove a label affixed as required under this subdivision (2).

History. Acts 1937, No. 344, § 10; Pope's Dig., § 10135; A.S.A. 1947, § 82-1010; Acts 2013, No. 1331, § 6.

Amendments. The 2013 amendment added subdivision designations; inserted

"or she" following "he" in (2)(A) and (2)(A)(i); substituted "prescribed" for "written" in (2)(A)(iii); substituted "for the use of" for "as may be stated on" in (2)(A)(iv); and rewrote (2)(B).

20-64-211. Authorized possession of narcotic drugs by individuals.

A person to whom or for whose use any narcotic drug has been prescribed, sold, or dispensed by a physician, dentist, apothecary, or other person authorized under the provisions of § 20-64-205, and the owner of any animal for which any such drug has been prescribed, sold, or dispensed, by a veterinarian, may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same.

History. Acts 1937, No. 344, § 11; Pope's Dig., § 10136; A.S.A. 1947, § 82-1011.

20-64-212. Persons and corporations exempted.

The provisions of this subchapter restricting the possession and having control of narcotic drugs shall not apply to common carriers or to warehousemen, while engaged in lawfully transporting or storing such drugs, or to any employee of the same acting within the scope of his employment; or to public officers or their employees in the performance of their official duties requiring possession or control of narcotic drugs; or to temporary incidental possession by employees or agents of persons lawfully entitled to possession, or by persons whose possession is for the purpose of aiding public officers in performing their official duties.

History. Acts 1937, No. 344, § 12; Pope's Dig., § 10137; A.S.A. 1947, § 82-1012.

20-64-213. Common nuisances.

Any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by narcotic drug addicts for the purpose of using narcotic drugs or which is used for the illegal keeping or selling of the same, shall be deemed a common nuisance. No person shall keep or maintain such a common nuisance.

History. Acts 1937, No. 344, § 13; Pope's Dig., § 10138; A.S.A. 1947, § 82-1013.

20-64-214. Narcotic drugs to be delivered to state official, etc.

Upon delivery to the Director of the Department of Health of any narcotic drugs discarded by the owner thereof or other person entitled to the possession or custody thereof, and upon the Director of the Department of Health delivering to such person an itemized receipt therefor, the Director of the Department of Health is empowered to destroy such narcotic drugs; provided, that the Director of the Department of Health shall keep for a period of three (3) years from the date of destruction a record of such transaction, showing the name and address of the person delivering the narcotic drugs, an itemized description thereof, the date and place of delivery, and the date of destruction.

All narcotic drugs, the lawful possession of which is not established or the title to which cannot be ascertained, which have come into the custody of a peace officer, shall be forfeited, and disposed of as follows:

(a) Except as in this section otherwise provided, the court or magistrate having jurisdiction shall order such narcotic drugs forfeited and destroyed. A record of the place where said drugs were seized, of the kinds and quantities of drugs so destroyed, and of the time, place, and manner of destruction shall be kept, and a return under oath, reporting said destruction, shall be made to the court or magistrate and to the

Director of the Drug Enforcement Administration by the officer who destroys them;

(b) Upon written application by the Director of the Department of Health, the court or magistrate by whom the forfeiture of narcotic drugs has been decreed may order the delivery of any of them except heroin and its salts and derivatives, to said Director of the Department of Health, for distribution or destruction, as hereinafter provided;

(c) Upon application by any hospital within this state not operated for private gain, the Director of the Department of Health may in his discretion deliver any narcotic drugs that have come into his custody by authority of this section to the applicant for medicinal use. The Director of the Department of Health may from time to time deliver excess stocks of such narcotic drugs to the Director of the Drug Enforcement Administration or may destroy the same;

(d) The Director of the Department of Health shall keep a full and complete record of all drugs received and of all drugs disposed of, showing the exact kinds, quantities, and forms of such drugs; the persons from whom received and to whom delivered; by whose authority received, delivered, and destroyed; and the dates of the receipt, disposal, or destruction, which record shall be open to inspection by all federal and state officers charged with the enforcement of federal and state narcotic laws.

History. Acts 1937, No. 344, § 14;
Pope's Dig., § 10139; Acts 1961, No. 416,
§ 1; A.S.A. 1947, § 82-1014.

20-64-215. Notice of conviction to be sent to licensing board.

On the conviction of any person of the violation of any provision of this subchapter, a copy of the judgment and sentence, and of the opinion of the court or magistrate, if any opinion be filed, shall be sent by the clerk of the court, or by the magistrate, to the board or officer, if any, by whom the convicted defendant has been licensed or registered to practice his profession or to carry on his business. On the conviction of any such person, the court may, in its discretion, suspend or revoke the license or registration of the convicted defendant to practice his profession or to carry on his business. On the application of any person whose license or registration has been suspended or revoked, and upon proper showing and for good cause, said board or officer may reinstate such license or registration.

History. Acts 1937, No. 344, § 15;
Pope's Dig., §§ 4617, 10140; A.S.A. 1947,
§ 82-1015.

20-64-216. Records confidential.

Prescriptions, orders, and records, required by this subchapter, and stocks of narcotic drugs, shall be open for inspection only to federal, state, county, and municipal officers, whose duty it is to enforce the laws of this state or of the United States relating to narcotic drugs. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

History. Acts 1937, No. 344, § 16; Pope's Dig., § 10141; A.S.A. 1947, § 82-1016.

20-64-217. Fraud or deceit.

(1) No person shall obtain or attempt to obtain a narcotic drug, or procure or attempt to procure the administration of a narcotic drug:

- (a) by fraud, deceit, misrepresentation, or subterfuge; or
- (b) by the forgery or alteration of a prescription or of any order; or
- (c) by the concealment of a material fact; or
- (d) by the use of a false name or the giving of a false address.

(2) Information communicated to a physician in an effort unlawfully to procure a narcotic drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall willfully make a false statement in any prescription, order, report, or record, required by this subchapter.

(4) No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, veterinarian, or other authorized person.

(5) A person shall not make or utter a false or forged prescription or false or forged order.

(6) No person shall affix any false or forged label to a package or receptacle containing narcotic drugs.

(7) The provisions of this section shall apply to all transactions relating to narcotic drugs under the provisions of § 20-64-208, in the same way as they apply to transactions under all other sections.

History. Acts 1937, No. 344, § 17; Pope's Dig., § 10142; A.S.A. 1947, § 82-1017; Acts 2013, No. 1331, §§ 7, 8.

Amendments. The 2013 amendment deleted "written" following "of any" in (1)(b) and following "or forged" in (5).

RESEARCH REFERENCES

Ark. L. Rev. Frankie M. Griffin, M.D., Prescription Opioids in Arkansas: Finding Legislative Balance, 68 Ark. L. Rev. 913 (2016).

CASE NOTES

Cited: *Diffie v. State*, 290 Ark. 194, 718 S.W.2d 94 (1986).

20-64-218. Exceptions and exemptions not required to be negatived.

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this subchapter, it shall not be necessary to negative any exception, excuse, proviso, or exemption contained in this subchapter, and the burden of proof of any such exception, excuse, proviso, or exemption shall be upon the defendant.

History. Acts 1937, No. 344, § 18; Pope's Dig., § 10143; A.S.A. 1947, § 82-1018.

20-64-219. Enforcement and cooperation.

It is hereby made the duty of the Director of the Department of Health, his officers, agents, inspectors, and representatives, and of all peace officers within the state, and of all prosecuting attorneys, to enforce all provisions of this subchapter, except those specifically designated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states, relating to narcotic drugs.

The authority to promulgate regulations for the efficient enforcement of this act is hereby vested in the director. The director is hereby authorized to make the regulations promulgated under this subchapter conform insofar as possible under the standards established herein and under the policies of this subchapter with those regulations promulgated under the federal Narcotic Act.

History. Acts 1937, No. 344, § 19; Pope's Dig., § 10144; Acts 1955, No. 155, § 4; 1965, No. 409, § 6; A.S.A. 1947, § 82-1019.

was codified in the 1939 Internal Revenue Code which has been completely revised. See now 18 U.S.C. § 371, 21 U.S.C. § 842 and 26 U.S.C. §§ 4701, 4771 and 6302(b).

U.S. Code. The federal Narcotic Act

20-64-220. Penalties.

(1) Except as provided in subdivision (2) of this section, a person violating any provision of this subchapter commits a felony and upon conviction shall be fined not more than two thousand dollars (\$2,000), and be imprisoned in the state penitentiary not less than two (2) nor more than five (5) years. For a second offense, or if, in case of a first conviction of violation of any provision of this subchapter, the offender shall previously have been convicted of any violation of the laws of the United States or of any other state, territory, or district relating to narcotic drugs or marijuana, the offender shall be guilty of a felony and

shall be fined not more than two thousand dollars (\$2,000) and be imprisoned in the state penitentiary not less than five (5) nor more than ten (10) years. For a third or subsequent offense, or if, the offender shall previously have been convicted two (2) or more times in the aggregate of any violation of the law of the United States or of any other state, territory, or district relating to narcotic drugs or marijuana, the offender shall be guilty of a felony and shall be fined not more than two thousand dollars (\$2,000) and be imprisoned in the state penitentiary not less than ten (10) or more than twenty (20) years.

Except in the case of conviction for a first offense for violation of the provisions of this subchapter the imposition or execution of sentence shall not be suspended and probation or parole shall not be granted until the minimum imprisonment herein provided for the offense shall have been served.

(2) A person violating § 20-64-217 in a manner involving only a preparation exempted by § 20-64-208 for a first conviction shall be fined not more than twenty-five dollars (\$25.00), for a second conviction shall be fined not more than fifty dollars (\$50.00), and for a third or subsequent conviction shall be fined not more than one hundred dollars (\$100).

History. Acts 1937, No. 344, § 20; Pope's Dig., § 10145; Acts 1955, No. 155, § 5; 1961, No. 418, § 1; 1963, No. 113, § 1; 1975, No. 928, § 24; A.S.A. 1947, § 82-1020.

Publisher's Notes. Acts 1963, No. 113, § 2, provided that the act applied to offenses committed and to prosecutions pending on February 28, 1963.

Acts 1975, No. 928, § 2, provided that,

notwithstanding that all or part of a statute defining a criminal offense was amended or repealed by the act, the provisions so amended or repealed would remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to April 8, 1975.

CASE NOTES

ANALYSIS

Instructions.

Statute of Limitation.

Instructions.

After a verdict of guilty and imposition of a sentence of two years' imprisonment, it was not error to instruct the jury to return to deliberations and amend its verdict by also imposing a fine. *Brown v. State*, 248 Ark. 561, 453 S.W.2d 50 (1970).

Statute of Limitation.

First offense charge of unlawful possession of marijuana is barred by the statute

of limitations where not filed within one year after commission of the alleged offense. *McIlwain v. State*, 226 Ark. 818, 294 S.W.2d 350 (1956).

Cited: *Perez v. State*, 249 Ark. 1111, 463 S.W.2d 394 (1971); *Crutchfield v. State*, 251 Ark. 137, 471 S.W.2d 361 (1971); *Diffie v. State*, 290 Ark. 194, 718 S.W.2d 94 (1986); *Hales v. State*, 299 Ark. 93, 771 S.W.2d 285 (1989).

20-64-221. Effect of acquittal or conviction under federal narcotic laws.

No person shall be prosecuted for a violation of any provision of this subchapter if such person has been acquitted or convicted under the federal narcotic laws of the same act or omission which, it is alleged, constitutes a violation of this subchapter.

History. Acts 1937, No. 344, § 21; Pope's Dig., § 10146; A.S.A. 1947, § 82-1021.

20-64-222. Constitutionality.

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are declared to be severable.

History. Acts 1937, No. 344, § 22.

20-64-223. Interpretation.

This subchapter shall be so interpreted and construed as to effectuate its general purpose, to make uniform the laws of those states which enact it.

History. Acts 1937, No. 344, § 23; Pope's Dig., § 10148; A.S.A. 1947, § 82-1022.

20-64-224. Inconsistent laws repealed.

All acts or parts of acts which are inconsistent with the provisions of this subchapter are repealed.

History. Acts 1937, No. 344, § 24.

20-64-225. Name of act.

This subchapter may be cited as the "Uniform Narcotic Drug Act".

History. Acts 1937, No. 344, § 25; Pope's Dig., § 10150; A.S.A. 1947, § 82-1023.

20-64-226. [Reserved.]

Publisher's Notes. Uniform Narcotic Drug Act (U.L.A.) § 26, which was not adopted in Arkansas, is an effective date provision.

SUBCHAPTER 3 — ARKANSAS DRUG ABUSE CONTROL ACT

SECTION.

- 20-64-301. Title.
- 20-64-302. Definitions.
- 20-64-303. Minor violations of subchapter.
- 20-64-304. Penalties.
- 20-64-305. Duty of prosecuting attorneys.
- 20-64-306. Prohibited acts.
- 20-64-307. Seizure and forfeiture of contraband — Generally.
- 20-64-308. Seizure and forfeiture of contraband — Hearing and disposition.
- 20-64-309. Depressant and stimulant drugs — Manufacturing, compounding, or processing prohibited — Exceptions.
- 20-64-310. Depressant and stimulant drugs — Sale, delivery, or disposal prohibited — Exceptions.

SECTION.

- 20-64-311. Depressant and stimulant drugs — Possession prohibited — Exceptions.
- 20-64-312. Depressant and stimulant drugs — Falsely obtaining or attempting to obtain prohibited — Exceptions.
- 20-64-313. Depressant and stimulant drugs — Records by certain persons required.
- 20-64-314. Depressant and stimulant drugs — Limitations on filling of prescriptions.
- 20-64-315. Depressant and stimulant drugs — Exemptions from §§ 20-64-309 — 20-64-315.
- 20-64-316. Authority of Department of Health employees to investigate, examine, and inspect.
- 20-64-317. Rules and regulations.

Cross References. Uniform Controlled Substances Act, § 5-64-101 et seq.

Effective Dates. Acts 1975, No. 928,

§ 1: effective simultaneously with the Arkansas Criminal Code on Jan. 1, 1976.

RESEARCH REFERENCES

C.J.S. 28 C.J.S., Drugs, § 14 et seq.

CASE NOTES

Cited: Ark. State Medical Bd. v. Grimmer, 250 Ark. 1, 463 S.W.2d 662 (1971);

Hosto v. Brickell, 265 Ark. 147, 577 S.W.2d 401 (1979).

20-64-301. Title.

This subchapter may be cited as the “Arkansas Drug Abuse Control Act”.

History. Acts 1967, No. 492, § 1; A.S.A. 1947, § 82-2101.

20-64-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Board” means the State Board of Health;

(2) "Counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed the drug and which thereby falsely purports, or is represented to be the product of, or to have been packed or distributed by, another drug manufacturer, processor, packer, or distributor;

(3) "Depressant or stimulant drug" means:

(A) Any drug which contains any quantity of barbituric acid or any of the salts of barbituric acid or any derivative of barbituric acid which has been designated under section 502(d) of the Federal Food, Drug, and Cosmetic Act, as presently in force and effect, as habit-forming and such other derivatives as the board shall define as habit-forming, provided that in formulating these definitions, the board shall take into consideration the provisions of the Federal Food, Drug, and Cosmetic Act as it exists from time to time and shall amend the definitions so as to keep them in harmony with the definitions prescribed by the Federal Food, Drug, and Cosmetic Act, insofar as is possible under the standards established in this subchapter and under the policy of it;

(B) Any drug which contains any quantity of:

(i) Amphetamine or any of its optical isomers;

(ii) Any salt of amphetamine or any salt of an optical isomer of amphetamine; or

(iii) Any substance designated by regulations promulgated under the Federal Food, Drug, and Cosmetic Act or by the board as habit-forming because of its stimulant effect on the central nervous system. In formulating these regulations, the board shall take into consideration the regulations promulgated from time to time under the Federal Food, Drug, and Cosmetic Act and shall amend the regulations so as to keep them in harmony with the definitions prescribed by the Federal Food, Drug, and Cosmetic Act; or

(C) Any drug which contains any quantity of a substance designated by regulations promulgated under the Federal Food, Drug, and Cosmetic Act or by the board as having a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect, provided that the board in formulating its regulations shall take into consideration all regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act and shall amend its regulations so as to keep them in harmony with the regulations prescribed by the Federal Food, Drug, and Cosmetic Act;

(4) "Drug" means articles recognized in the official *United States Pharmacopoeia*, or official *Homeopathic Pharmacopoeia of the United States*, or official *National Formulary*, or any supplement to any of them, but does not include devices or their components, parts, or accessories;

(5) "Federal act" designates the Federal Food, Drug, and Cosmetic Act, which was in effect on June 30, 1967, and all amendments thereto;

(6) "Manufacture", "compound", or "process" shall include repackaging or otherwise changing the container, wrapper, or labeling of any drug package in the furtherance of the distribution of the drug from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer, and the term "manufacturers", "compounders", and "processors" shall be deemed to refer to persons engaged in those defined activities;

(7) "Person" includes individual, partnership, corporation, and association; and

(8) "Practitioner" means a physician, dentist, veterinarian, or other person licensed in this state to prescribe or administer drugs which are subject to this subchapter.

History. Acts 1967, No. 492, § 2; A.S.A. 1947, § 82-2102.

U.S. Code. The Federal Food, Drug, and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.

Section 502(d) of the Federal Food, Drug, and Cosmetic Act, referred to in this section, was codified as 21 U.S.C. § 352(d) (now repealed).

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Trademark Counterfeiting Statutes. 63 A.L.R.6th 303.

20-64-303. Minor violations of subchapter.

Nothing in this subchapter shall be construed as requiring the State Board of Health to report for the institution of proceedings under this subchapter minor violations of this subchapter whenever the Director of the Department of Health believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History. Acts 1967, No. 492, § 6; A.S.A. 1947, § 82-2106.

20-64-304. Penalties.

(a)(1) Any person violating any of the provisions of this subchapter commits a felony and shall, upon conviction, be fined not more than two thousand dollars (\$2,000) or be imprisoned in the state penitentiary for not more than two (2) years, or be both fined and imprisoned, in the discretion of the court.

(2) For a second offense, the offender commits a felony and shall be fined not more than two thousand dollars (\$2,000) and be imprisoned in the state penitentiary for not less than three (3) years nor more than (5) years.

(3) For a third or subsequent offense, the offender commits a felony and shall be fined not more than five thousand dollars (\$5,000) and be imprisoned in the state penitentiary for not less than five (5) years nor more than ten (10) years.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated § 20-64-306(9) and (10) if the person acted in good faith and had no reason to believe that use of the punch, die, plate, stone, or other thing involved would result in a drug's being a counterfeit drug or for having violated § 20-64-306(10) if the person doing the act or causing it to be done acted in good faith and had no reason to believe that the drug was a counterfeit drug.

History. Acts 1967, No. 492, § 4; 1975, No. 928, § 25; A.S.A. 1947, § 82-2104.

Publisher's Notes. Acts 1975, No. 928, § 2, provided that, notwithstanding that all or part of a statute defining a criminal offense was amended or repealed by the

act, the provisions so amended or repealed would remain in force for the purpose of authorizing the prosecution, conviction, and punishment of a person committing an offense under the provisions prior to April 8, 1975.

20-64-305. Duty of prosecuting attorneys.

It shall be the duty of each prosecuting attorney to whom the State Board of Health reports any violation of this subchapter to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History. Acts 1967, No. 492, § 6; A.S.A. 1947, § 82-2106.

20-64-306. Prohibited acts.

The following acts and the causing thereof within the State of Arkansas are prohibited:

(1) The manufacture, compounding, or processing of a drug in violation of § 20-64-309;

(2) The sale, delivery, or other disposition of a drug in violation of § 20-64-310;

(3) The possession of a drug in violation of § 20-64-311;

(4) Obtaining a drug in violation of § 20-64-312;

(5) The failure to prepare or obtain, or the failure to keep, a complete and accurate record with respect to any drug as required by § 20-64-313;

(6) The refusal to permit access to or copying of any record as required by § 20-64-313;

(7) The refusal to permit entry or inspection as authorized by § 20-64-313;

(8) The filling or refilling of any prescription in violation of § 20-64-314;

(9) Making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or

other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render a drug a counterfeit drug; and

(10) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug.

History. Acts 1967, No. 492, § 3; A.S.A. 1947, § 82-2103.

RESEARCH REFERENCES

ALR. Validity, Construction, and Application of State Trademark Counterfeiting Statutes. 63 A.L.R.6th 303.

20-64-307. Seizure and forfeiture of contraband — Generally.

The following are declared to be contraband and shall be seized and forfeited without warrant by an authorized agent of the State Board of Health whenever he or she has reasonable grounds to believe they are:

(1) A depressant or stimulant drug with respect to which a prohibited act within the meaning of § 20-64-306 has occurred;

(2) A drug that is a counterfeit;

(3) A container of a depressant or stimulant drug or of a counterfeit drug;

(4) Equipment used in manufacturing, compounding, or processing a depressant or stimulant drug with respect to which drug a prohibited act within the meaning of § 20-64-306 has occurred; and

(5) Any punch, die, plate, stone, labeling, container, or other thing used or designed for use in making a counterfeit drug or drugs.

History. Acts 1967, No. 492, § 5; A.S.A. 1947, § 82-2105.

CASE NOTES

Search Warrant.

This section does not authorize the issuance of a search warrant. *Grimmett v.*

State, 251 Ark. 270a, 476 S.W.2d 217 (1972).

20-64-308. Seizure and forfeiture of contraband — Hearing and disposition.

(a)(1) When an article, drug, or other thing is seized and forfeited under the provisions of § 20-64-307, the Director of the Department of Health or his or her authorized agent shall, within five (5) days thereafter, publish in a newspaper having a statewide circulation a notice containing a list of the articles, equipment, drugs, or other things seized, the name or names of the person or persons, if known, from whom taken, and the place where seized.

(2) The notice shall advise that the article, drug, or other thing seized and forfeited will be destroyed or sold by the director at the expiration of thirty (30) days from the date of publication of the notice.

(3) Any person claiming any interest in the article, equipment, drug, or other thing may, at any time within the thirty (30) days after the publication of the notice, petition the director for a hearing to be held in the director's office in Little Rock.

(4) The director shall set a date for the hearing not later than ten (10) days after receiving the written request at which time witnesses shall be sworn and evidence shall be taken.

(5) Within fifteen (15) days after such hearing, the director shall enter his or her written findings of fact and order upon the testimony so presented.

(6) The findings of fact and order of the director may be appealed to the Pulaski County Circuit Court by lodging with the court within fifteen (15) days after the director's order has been entered a transcript of record of the hearing held before the director. The circuit court shall hear no new evidence on such appeal and shall render its judgment only on errors of law.

(7) An appeal from the judgment of the circuit court may be taken to the Supreme Court.

(b)(1) If the director receives no written petition for a hearing within thirty (30) days from the date of the publication of notice as provided in this section, the director shall, in his or her discretion, proceed to take bids on the article, equipment, drug, or other things seized and forfeited under § 20-64-307 and shall sell them to the highest bidder, or he or she may destroy the articles, equipment, drugs, or other things and shall preserve a written record thereof for two (2) years.

(2) The proceeds for the sale of the articles, drugs, or other things shall be deposited with the Treasurer of State as nonrevenue receipts for credit to the State Apportionment Fund as general revenues to be distributed for the respective purposes as provided by law.

History. Acts 1967, No. 492, § 5; A.S.A. 1947, § 82-2105.

RESEARCH REFERENCES

ALR. Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Proximity of asset to drugs, paraphernalia, or records. 115 A.L.R.5th 403.

Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Odor of drugs. 116 A.L.R.5th 325.

20-64-309. Depressant and stimulant drugs — Manufacturing, compounding, or processing prohibited — Exceptions.

No person shall manufacture, compound, or process in this state any depressant or stimulant drug, except that this prohibition shall not apply to the following persons whose activities in connection with any drug are as specified in this section:

(1) Manufacturers, compounders, and processors, operating in conformance with the laws of this state relating to the manufacture, compounding, or processing of drugs, who are regularly engaged in preparing pharmaceutical chemicals or prescription drugs for distribution through branch outlets, through wholesale druggists, or by direct shipment:

(A) To pharmacies or to hospitals, clinics, public health agencies, or physicians for dispensing by registered pharmacists upon prescriptions, or for use by or under the supervision of practitioners licensed in this state to administer the drugs in the course of their professional practice; or

(B) To laboratories or research or educational institutions for their use in lawful research, teaching, or chemical analysis;

(2) Suppliers, operating in conformance with the laws of this state relating to the manufacture, compounding, or processing of drugs of manufacturers, compounders, and processors referred to in subdivision (1) of this section;

(3) Wholesale druggists who maintain their establishments in conformance with state and local laws relating to the manufacture, compounding, or processing of drugs and are regularly engaged in supplying prescription drugs:

(A) To pharmacies, or to hospitals, clinics, public health agencies, or physicians for dispensing by registered pharmacists upon prescriptions or for use by or under the supervision of practitioners licensed in this state to administer the drugs in the course of their professional practice; or

(B) To laboratories or research or educational institutions for their use in lawful research, teaching, or clinical analysis;

(4) Pharmacies, hospitals, clinics, and public health agencies which maintain their establishments in conformance with state and local laws regulating the practice of pharmacy and medicine which are regularly engaged in dispensing drugs upon prescriptions of practitioners licensed in this state to administer the drugs for patients under the care of the practitioners in the course of their professional practice;

(5) Practitioners licensed in this state to prescribe or administer depressant or stimulant drugs, while acting in the course of their professional practice;

(6) Persons who use depressant or stimulant drugs in research, teaching, or chemical analysis and not for sale;

(7) Officers and employees of this state or of a political subdivision of this state or of the United States while acting in the course of their official duties; and

(8) An employee or agent of any person described in subdivisions (1)-(6) of this section and a nurse under the supervision of a practitioner licensed by law in this state to administer depressant or stimulant drugs, while the employee or nurse is acting in the course of his or her employment or occupation and not on his or her own account.

History. Acts 1967, No. 492, § 7; A.S.A. 1947, § 82-2107.

CASE NOTES

Cited: Floyd v. Ark. State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Ark. State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmett v. State, 251 Ark. 270a, 476 S.W.2d 217 (1972).

20-64-310. Depressant and stimulant drugs — Sale, delivery, or disposal prohibited — Exceptions.

No person shall sell, deliver, or otherwise dispose of any depressant or stimulant drug or counterfeit drug to any other person unless that person is:

(1) A person described in § 20-64-309, while the person is acting in the ordinary and authorized course of his or her business, profession, occupation, or employment; or

(2) A common or contract carrier or warehouser, or an employee thereof, whose possession of any depressant or stimulant drug or counterfeit drug is in the usual course of his or her business or employment as such.

History. Acts 1967, No. 492, § 7; A.S.A. 1947, § 82-2107.

CASE NOTES

Cited: Floyd v. Ark. State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Ark. State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmett v. State, 251 Ark. 270a, 476 S.W.2d 217 (1972).

20-64-311. Depressant and stimulant drugs — Possession prohibited — Exceptions.

No person other than a person described in § 20-64-309 or § 20-64-310(2) shall possess any depressant or stimulant drug unless:

(1) The drug was obtained upon a valid prescription and is held in the original container in which the drug was delivered; or

(2) The drug was delivered by a practitioner in the course of his or her professional practice, and the drug is held in the immediate container in which the drug was delivered.

History. Acts 1967, No. 492, § 7; A.S.A. 1947, § 82-2107.

CASE NOTES

Cited: Floyd v. Ark. State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Ark. State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmett v. State, 251 Ark. 270a, 476 S.W.2d 217 (1972).

20-64-312. Depressant and stimulant drugs — Falsely obtaining or attempting to obtain prohibited — Exceptions.

(a) No person other than a person described in § 20-64-309(7) shall obtain or attempt to obtain a depressant or stimulant drug by:

(1) Fraud, deceit, misrepresentation, or subterfuge;

(2) Falsely assuming the title of or representing himself or herself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess stimulant or depressant drugs;

(3) The use of a forged or altered prescription; or

(4) The use of a false name or false address on a prescription.

(b) However, this section shall not apply to drug manufacturers, their agents, or employees when the manufacturers, their agents, or employees are authorized to engage in and are actually engaged in investigative activities directed toward the safeguarding of the drug manufacturer's trademark.

History. Acts 1967, No. 492, § 7; A.S.A. 1947, § 82-2107.

CASE NOTES

Cited: Floyd v. Ark. State Bd. of Pharmacy, 248 Ark. 459, 451 S.W.2d 874 (1970); Ark. State Medical Bd. v. Grimmett, 250 Ark. 1, 463 S.W.2d 662 (1971); Grimmett v. State, 251 Ark. 270a, 476 S.W.2d 217 (1972).

20-64-313. Depressant and stimulant drugs — Records by certain persons required.

(a)(1) Every person engaged in manufacturing, compounding, processing, selling, delivering, or otherwise disposing of any depressant or stimulant drug shall, on and after June 30, 1967, prepare a complete and accurate record of all stocks of each drug on hand and shall keep the record for three (3) years, except that if this record has already been prepared in accordance with section 511(d) of the Federal Food, Drug, and Cosmetic Act, no additional record shall be required, provided that all records prepared under section 511(d) of the Federal Food, Drug, and Cosmetic Act have been retained and are made available to the State Board of Health upon request. When additional depressant or stimulant drugs are designated by the board after June 30, 1967, a similar record must be prepared upon the effective date of the designation on and after June 30, 1967. Every person manufacturing,

compounding, or processing any depressant or stimulant drug shall prepare and keep, for not less than three (3) years, a complete and accurate record of the kind and quantity of each drug manufactured, compounded, or processed and the date of the manufacture, compounding, or processing.

(2) Every person selling, delivering, or otherwise disposing of any depressant or stimulant drug shall prepare or obtain, and keep for not less than three (3) years, a complete and accurate record of the kind and quantity of each drug received, sold, delivered, or otherwise disposed of, the name and address from whom it was received and to whom it was sold, delivered, or otherwise disposed of, and the date of the transaction.

(b)(1) Every person required by subdivision (a)(1) of this section to prepare or obtain, and keep, records and any carrier maintaining records with respect to any shipment containing any depressant or stimulant drug, and every person in charge, or having custody, of the records, shall, upon request of an officer or employee designated by the board, permit an officer or employee at reasonable times to have access to and copy the records. For the purposes of verification of the records and of enforcement of this subchapter, officers or employees designated by the board are authorized, to enter, at reasonable times, any factory, warehouse, establishment, or vehicle in which any depressant or stimulant drug is held, manufactured, compounded, processed, sold, delivered, or otherwise disposed of and to inspect, within reasonable limits and in a reasonable manner, the factory, warehouse, establishment, or vehicle, and all pertinent equipment, finished and unfinished material, containers and labeling therein, and all things therein including records, files, papers, processes, controls, and facilities; and to inventory any stock of any such drug therein and obtain samples of any drug.

(2) No inspection authorized by subdivision (b)(1) of this section shall extend to:

- (A) Financial data;
- (B) Sales data other than shipment data;
- (C) Pricing data;
- (D) Personnel data; or
- (E) Research data.

(c) The provisions of subsections (a) and (b) of this section shall not apply to a licensed practitioner described in § 20-64-309(5) with respect to any depressant or stimulant drug received, prepared, processed, administered, or dispensed by him or her in the course of his or her professional practice unless the practitioner regularly engages in dispensing any drug or drugs to his or her patients for which they are charged, either separately or together with charges for other professional services.

codified as 21 U.S.C. § 511(d), which has been repealed. For present similar provisions, see 21 U.S.C. § 827 et seq.

CASE NOTES

Cited: *Floyd v. Ark. State Bd. of Pharmacy*, 248 Ark. 459, 451 S.W.2d 874 (1970); *Ark. State Medical Bd. v. Grimmett*, 250 Ark. 1, 463 S.W.2d 662 (1971); *Grimmett v. State*, 251 Ark. 270a, 476 S.W.2d 217 (1972).

20-64-314. Depressant and stimulant drugs — Limitations on filling of prescriptions.

(a)(1)(A) A prescription for a depressant or stimulant drug shall not be filled or refilled more than six (6) months after the date on which the prescription was issued.

(B) A prescription that is authorized to be refilled shall not be refilled more than five (5) times.

(2) However, this subchapter does not prevent a practitioner from issuing a new written prescription for the same drug.

(b) If no indication of refill status is indicated on the prescription, it shall not be refilled.

History. Acts 1967, No. 492, § 7; A.S.A. 1947, § 82-2107; Acts 2013, No. 1331, § 9. **Amendments.** The 2013 amendment added subdivision designations; deleted “and no” at the end of (a)(1)(A); and rewrote (a)(2).

CASE NOTES

Cited: *Floyd v. Ark. State Bd. of Pharmacy*, 248 Ark. 459, 451 S.W.2d 874 (1970); *Ark. State Medical Bd. v. Grimmett*, 250 Ark. 1, 463 S.W.2d 662 (1971); *Grimmett v. State*, 251 Ark. 270a, 476 S.W.2d 217 (1972).

20-64-315. Depressant and stimulant drugs — Exemptions from §§ 20-64-309 — 20-64-315.

Depressant or stimulant drugs exempted under section 511(f) of the Federal Food, Drug, and Cosmetic Act and such other drugs as the State Board of Health shall specify are exempted from the application of §§ 20-64-309 — 20-64-315.

History. Acts 1967, No. 492, § 7; A.S.A. 1947, § 82-2107. **U.S. Code.** Section 511(f) of the federal act referred to in this section was formerly

codified as 21 U.S.C. § 360a, which has been repealed. For present similar provisions, see 21 U.S.C. §§ 801 et seq.

CASE NOTES

Cited: *Floyd v. Ark. State Bd. of Pharmacy*, 248 Ark. 459, 451 S.W.2d 874 (1970); *Ark. State Medical Bd. v. Grimmett*, 250 Ark. 1, 463 S.W.2d 662 (1971); *Grimmett v. State*, 251 Ark. 270a, 476 S.W.2d 217 (1972).

20-64-316. Authority of Department of Health employees to investigate, examine, and inspect.

Any officer or employee of the Department of Health designated by the Director of the Department of Health to conduct examinations, investigations, or inspections under this subchapter relating to depressant or stimulant drugs or to counterfeit drugs may, when so authorized by the director:

- (1) Carry firearms;
- (2) Execute and serve search warrants and arrest warrants;
- (3) Execute seizure by process issued pursuant to §§ 20-64-307 and 20-64-308;
- (4) Make arrests without warrant for offenses under this subchapter with respect to drugs if the offense is committed in his or her presence; and
- (5) Make seizures of drugs or containers or equipment, punches, dies, plates, stone, labeling, or other things, if they are, or he or she has reasonable grounds to believe that they are, subject to seizure and condemnation under §§ 20-64-307 and 20-64-308.

History. Acts 1967, No. 492, § 9; A.S.A. 1947, § 82-2109.

CASE NOTES

Search Warrant.

This section does not authorize the issuance of a search warrant. *Grimmett v.*

State, 251 Ark. 270a, 476 S.W.2d 217 (1972).

20-64-317. Rules and regulations.

(a) The authority to promulgate rules and regulations for the efficient enforcement of this subchapter is vested in the State Board of Health.

(b) Before the rules or regulations or amendments thereto shall become effective, the board shall publish notice two (2) times weekly for two (2) consecutive weeks in a newspaper of general circulation in this state, setting forth in the newspaper notice a concise summary of the proposed rule, regulation, or amendment thereto and setting forth, in addition, the time and place at which open public hearings are to be held on the rules and regulations.

(c) The hearing shall be held not earlier than ten (10) days nor later than fifteen (15) days following the last published notice thereon.

(d) The board is authorized to make the regulations promulgated under this subchapter conform, insofar as practicable, with those promulgated under the Federal Food, Drug, and Cosmetic Act.

History. Acts 1967, No. 492, § 8; A.S.A. 1947, § 82-2108. and Cosmetic Act, referred to in this section, is codified as 21 U.S.C. § 301 et seq.

U.S. Code. The Federal Food, Drug,

SUBCHAPTER 4 — HALLUCINOGENIC DRUGS

SECTION.	SECTION.
20-64-401. Penalties.	20-64-403. Use, possession, sale, etc., prohibited — Exceptions.
20-64-402. Use, possession, sale, etc., prohibited — Generally.	

Cross References. Uniform Controlled Substances Act, § 5-64-101 et seq.

20-64-401. Penalties.

- (a) Any person violating any provision of this subchapter shall be guilty of a felony and upon conviction shall be subject to imprisonment in the state penitentiary for a term of not less than three (3) years nor more than five (5) years.
- (b) For the second or any subsequent violation of this subchapter, the person shall be subject to imprisonment in the state penitentiary for a term of not less than five (5) years or more than ten (10) years.

History. Acts 1967, No. 111, § 3; A.S.A. 1947, § 82-2112.

20-64-402. Use, possession, sale, etc., prohibited — Generally.

- It shall be unlawful for any person, except as provided in this subchapter, to use, possess, have in one's possession, sell, exchange, give or attempt to give to another, barter, or otherwise dispose of:
- (1) Lysergic acid;
 - (2) LSD, which is d-lysergic acid diethylamide;
 - (3) DMT, which is N-N-dimethyltryptamine;
 - (4) Any compound, mixture, or preparation which is physiologically similar to any drug listed in subdivisions (1)-(3) of this section in its effect on the central nervous system; or
 - (5) Any salt or derivative of any drug listed in subdivisions (1)-(3) of this section.

History. Acts 1967, No. 111, § 1; A.S.A. 1947, § 82-2110.

CASE NOTES

ANALYSIS	chemist to make an independent analysis of the LSD. <i>Alexander v. State</i> , 257 Ark. 343, 516 S.W.2d 368 (1974).
Drug Analysis. Evidence.	Evidence. As long as alleged accomplices were charged with separate offenses under this section and the asserted accomplice, who
Drug Analysis. Defendant charged with the sale of LSD was not entitled to state funds to hire a	

was asked to testify, was not guilty of the principal offense on trial, it made no difference in his ability to testify that he was guilty of offense defined by this section. *Sweatt v. State*, 251 Ark. 650, 473 S.W.2d 913 (1971).

20-64-403. Use, possession, sale, etc., prohibited — Exceptions.

The drugs enumerated in § 20-64-402 may lawfully be possessed by:

(1) A manufacturer licensed by the United States Food and Drug Administration to produce and distribute the drugs, or his or her agent, to be sold only to a person authorized in this section to possess the drugs or transport in interstate commerce. Each shipment must bear the identifying number assigned by the United States Food and Drug Administration;

(2)(A) A licensed pharmacy, to be dispensed only to a licensed physician or research scientist qualified under subdivision (3) or subdivision (4) of this section.

(B) However, every pharmacy which receives or dispenses the drug shall keep a record showing the date, amount, and source of drugs received, the date of dispensing, the name and address of the person to whom dispensed, and the kind and quantity of drugs.

(C) The record shall be kept for a period of three (3) years from the date of the transaction recorded and shall be open to inspection by any peace officer or health officer of this state or by any equivalent federal officer;

(3)(A) A licensed physician, provided that every physician who receives or administers the drug shall keep a record showing the date, amount, and source of drugs received, the date of administration, the name and address of the person to whom administered, and the kind and quantity of drugs.

(B) Every record shall be kept for a period of three (3) years from the date of administration and shall be open to inspection by any peace officer or health officer of this state or by any equivalent federal officer.

(C) Any physician who administers any drug listed in § 20-64-402 to any human being shall keep the patient under his or her personal supervision and care until the effect of the drug has entirely ceased; and

(4)(A) A licensed psychologist or a member of the faculty of a college or university in this state who is qualified by scientific training and experience to investigate the safety and effectiveness of the drugs, to be used only for research and not to be administered to any human being except under the supervision of a physician as provided in subdivision (3) of this section.

(B) Any psychologist or research scientist who uses the drug shall keep a record showing the date, amount, and source of drugs received and the disposition and use of all drugs.

(C) Every record shall be kept for a period of three (3) years from date of use and shall be open to inspection by any peace officer or health officer of this state or by any equivalent federal officer.

History. Acts 1967, No. 111, § 2; A.S.A. 1947, § 82-2111.

SUBCHAPTER 5 — CONTROLLED SUBSTANCES AND LEGEND DRUGS

SECTION.

- 20-64-501. Applicability.
- 20-64-502. Construction.
- 20-64-503. Definitions.
- 20-64-504. Sales — Permit required.
- 20-64-505. Wholesale distributor — Permit required.
- 20-64-506. Wholesale distributors — Shipment to certain licensed professionals.

SECTION.

- 20-64-507. Regulations.
- 20-64-508. Revocation or suspension of licenses.
- 20-64-509. Penalties.
- 20-64-510. Hearing procedures.
- 20-64-511. Violations.
- 20-64-512. Inspection of records.
- 20-64-513. Injunctive powers.

Cross References. Recordkeeping of legend drugs dispensed, § 17-95-102.

Uniform Controlled Substances Act, § 5-64-101 et seq.

Effective Dates. Acts 1969, No. 173, § 8: Mar. 5, 1969. Emergency clause provided: "It being found and determined by the General Assembly that the sale of depressant and stimulant drugs in and into the State of Arkansas by unregistered persons is constituting a danger and threat to the health, safety and welfare of the people of the State of Arkansas and must be controlled, and that the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, it shall be in full force and

effect from the date of its passage and approval."

Acts 1981, No. 257, § 5: Feb. 27, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that the sale of controlled substances and legend drugs in the State of Arkansas by unregistered persons is constituting a danger and threat to the health, safety and welfare of the people of the State of Arkansas and must be controlled; that this Act is designed to provide such control and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

CASE NOTES

Cited: *Merrill v. State*, 277 Ark. 146, 640 S.W.2d 787 (1982).

20-64-501. Applicability.

Nothing in this subchapter shall apply to the sale of chemicals or poisons for use for nonmedical purposes, or for uses as insecticides or biologics or medicine used for the cure, mitigation, or prevention of disease of animals or fowl, and uses for agricultural use which comply with the requirements of the Federal Food, Drug, and Cosmetic Act and all amendments thereto unless those products are prescription drugs under this subchapter.

History. Acts 1969, No. 173, § 5; A.S.A. and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq. 1947, § 82-2117; Acts 1991, No. 739, § 1. **U.S. Code.** The Federal Food, Drug,

20-64-502. Construction.

(a) This subchapter shall be construed to repeal only those provisions of the pharmacy laws of Arkansas in direct and specific conflict herewith.

(b) The provisions of this subchapter shall otherwise be cumulative to the pharmacy laws of Arkansas.

History. Acts 1969, No. 173, § 7.

20-64-503. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing;

(2) "Blood component" means that part of blood separated by physical or mechanical means;

(3) "Board" means the Arkansas State Board of Pharmacy;

(4) "Controlled substance" means those substances, drugs, or immediate precursors listed in Schedules I through VI of the Uniform Controlled Substances Act, § 5-64-101 et seq., and revised by the Director of the Department of Health pursuant to his or her authority under §§ 5-64-214 — 5-64-216;

(5) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug;

(6)(A) "Legend drug" means a drug limited by section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:

(i) Habit-forming;

(ii) Toxic or having potential for harm; or

(iii) Limited in its use to use under a practitioner's supervision by the new drug application for the drug.

(B) The product label of a legend drug is required to contain the statement: "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT A PRESCRIPTION".

(C) A legend drug includes prescription drugs subject to the requirement of section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act which shall be exempt from section 502(F)(1) if certain specified conditions are met;

(7) "Manufacturer" means anyone who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug;

(8) "Person" includes individual, partnership, corporation, business firm, and association;

(9) "Prescription drug" means controlled substances, legend drugs, and veterinary legend drugs as defined herein;

(10) “Veterinary legend drugs” means drugs defined in 21 C.F.R. § 201.105 and bearing a label required to bear the cautionary statement: “CAUTION: FEDERAL LAW RESTRICTS THIS DRUG TO USE BY OR ON ORDER OF A LICENSED VETERINARIAN”;

(11) “Wholesale distribution” means the distribution of prescription drugs to persons other than consumers or patients but does not include:

(A) Intracompany sales;

(B) The purchase or other acquisition by a hospital or other healthcare entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or healthcare entities that are members of the organizations;

(C) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(D) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other healthcare entities that are under common control. For the purposes of this section, “common control” means the power to direct or cause the direction of the management and policies of a person or an organization whether by ownership of stock or voting rights, by contract, or otherwise;

(E) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons; for purposes of this section, “emergency medical reasons” includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(F) The sale, purchase, or trade of a drug, an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(G) The distribution of drug samples by manufacturers’ representatives or distributors’ representatives; or

(H) The sale, purchase, or trade of blood components intended for transfusion; and

(12) “Wholesale distributor” means any person engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers; repackers’ own-label distributors; private label distributors; jobbers; brokers; warehouses, including manufacturers’ and distributors’ warehouses, chain drug warehouses, and wholesale drug warehouses; independent wholesale drug traders; prescription drug repackagers; physicians; dentists; veterinarians; birth control and other clinics; individuals; hospitals; nursing homes and their providers; health maintenance organizations and other healthcare providers; and retail and hospital pharmacies that conduct wholesale distributions. A wholesale drug distributor shall not include any for-hire carrier or person or entity hired solely to transport prescription drugs.

History. Acts 1969, No. 173, § 1; 1979, No. 751, § 3; 1981, No. 257, § 1; A.S.A. 1947, § 82-2113; Acts 1991, No. 739, § 2.

U.S. Code. The Federal Food, Drug, and Cosmetic Act referred to in this section is codified as 21 U.S.C. § 301 et seq.

Section 503(b)(1) of the Federal Food, Drug, and Cosmetic Act is codified as 21 U.S.C. § 353(b)(1).

Section 501(c)(3) of the Internal Revenue Code, referred to in this section, is codified as 26 U.S.C. § 501(c)(3).

20-64-504. Sales — Permit required.

It shall be unlawful for any person to sell or offer for sale by advertisement, circular, letter, sign, oral solicitation, or any other means any prescription drug unless the person holds and possesses a permit authorizing the sale as provided by this subchapter.

History. Acts 1969, No. 173, § 4; 1979, No. 751, § 6; A.S.A. 1947, § 82-2116; Acts 1991, No. 739, § 3.

CASE NOTES

ANALYSIS

Constitutionality.

Effect of 1979 Amendment.

Constitutionality.

There was no equal protection violation in the fact that someone convicted of selling controlled substances illegally under former § 5-64-401 was guilty of a felony, while someone convicted of selling controlled substances without a permit under this section was guilty only of a misdemeanor. The legislature could reasonably have found that the severe penalty appropriate to efforts to control the illegal sale

of drugs to addicts was not necessary in the control of businesses and professions that sell and use drugs legally for the treatment of patients. *Merrill v. State*, 277 Ark. 146, 640 S.W.2d 787 (1982).

Effect of 1979 Amendment.

The 1979 amendment to this section did not either expressly or impliedly repeal former § 5-64-401 of the Controlled Substances Act, which made the illegal sale of controlled substances a felony. *Merrill v. State*, 277 Ark. 146, 640 S.W.2d 787 (1982).

Cited: *Reding v. State*, 277 Ark. 288, 641 S.W.2d 24 (1982).

20-64-505. Wholesale distributor — Permit required.

(a) Every wholesale distributor who shall engage in the wholesale distribution of prescription drugs, to include without limitation, manufacturing in this state, shipping into this state, or selling or offering to sell in this state, shall register annually with the Arkansas State Board of Pharmacy by application for a permit on a form furnished by the board and accompanied by a fee of two hundred dollars (\$200). The board may require a separate license for each facility directly or indirectly owned or operated by the same business entity within this state, or for a parent entity with divisions, subdivisions, subsidiaries, or affiliate companies within this state when operations are conducted at more than one (1) location and there exists joint ownership and control among all the entities.

(b)(1) The permit may be renewed annually at a renewal permit fee of one hundred dollars (\$100).

(2) All permits issued under this section shall expire on December 31 of each calendar year.

(3) Each application for the renewal of the permit must be made on or before December 31 of each year, at which time the previous permits shall become null and void.

(c) Each permit issued hereunder shall be displayed by the holder thereof in a conspicuous place.

History. Acts 1969, No. 173, § 2; 1979, No. 751, § 4; 1981, No. 257, § 2; A.S.A. 1947, § 82-2114; Acts 1991, No. 739, § 4.

20-64-506. Wholesale distributors — Shipment to certain licensed professionals.

(a) All wholesale distributors must, before shipping to a recipient in this state any prescription drug as defined in this subchapter, ascertain that the person to whom shipment is made is either a physician licensed by the Arkansas State Medical Board, a licensed doctor of dentistry, a licensed doctor of veterinary medicine, a licensed doctor of podiatric medicine, a hospital licensed by the State Board of Health, a licensed wholesale distributor as defined in this subchapter, a pharmacy licensed by the Arkansas State Board of Pharmacy, or other entity authorized by law to purchase or possess prescription drugs.

(b) No wholesale distributor shall ship any prescription drug to any person after receiving written notice from the Arkansas State Board of Pharmacy that the person no longer holds a registered pharmacy permit or is not a licensed physician, dentist, veterinarian, or hospital.

History. Acts 1969, No. 173, § 2; 1979, No. 751, § 4; 1981, No. 257, § 2; A.S.A. 1947, § 82-2114; Acts 1991, No. 739, § 5.

20-64-507. Regulations.

(a) The Arkansas State Board of Pharmacy shall adopt regulations for the wholesale distribution of prescription drugs which promote the public health and welfare and which comply with the minimum standards, terms, and conditions of the Prescription Drug Marketing Act and federal regulations, including without limitations 21 C.F.R. § 205, for licensing by state authorities of persons who engage in the wholesale distribution in interstate commerce of prescription drugs. The regulations shall include without limitation:

(1) Minimum information from each wholesale distributor required for licensing and renewal of licenses;

(2) Minimum qualifications of persons who engage in the wholesale distribution of prescription drugs;

(3) Appropriate education or experience, or both, of persons employed in wholesale distribution of prescription drugs who assume responsibility for positions related to compliance with state licensing requirements;

(4) Minimum requirements for the storage and handling of prescription drugs; and

(5) Minimum requirements for the establishment and maintenance of prescription drug distribution records.

(b) In the event that this subchapter or regulations promulgated under this subchapter conflict with the federal Prescription Drug Marketing Act or federal regulations, the federal Prescription Drug Marketing Act or federal regulations shall control.

(c) The board shall appoint an advisory committee composed of seven (7) members, one (1) of whom shall be a representative of a pharmacy but who shall not be a member of the board, three (3) of whom shall be representatives of wholesale drug distributors, and three (3) of whom shall be representatives of drug manufacturers. The committee shall review and make recommendations to the board on the merit of all rules and regulations dealing with pharmacy distributors, wholesale drug distributors, and drug manufacturers which are proposed by the board.

History. Acts 1969, No. 173, § 3; 1979, No. 751, § 5; 1981, No. 257, § 3; A.S.A. 1947, § 82-2115; Acts 1991, No. 739, § 6. Marketing Act, referred to in this section, is codified as 21 U.S.C. §§ 301 note, 331, 333, 353, 353 notes, and 381.

U.S. Code. The Prescription Drug

CASE NOTES

Cited: Dunhall Pharmaceuticals, Inc. v. State, 295 Ark. 483, 749 S.W.2d 666 (1988).

20-64-508. Revocation or suspension of licenses.

The Arkansas State Board of Pharmacy may revoke or suspend an existing license or may refuse to issue a license under this subchapter if the holder or applicant has committed or is found guilty by the board of any of the following:

(1) Violation of any federal, state, or local law or regulation relating to drugs;

(2) Violation of any provisions of this subchapter or any regulation promulgated hereunder; or

(3) Commission of an act or engaging in a course of conduct which constitutes a clear and present danger to the public health and safety.

History. Acts 1969, No. 173, § 3; 1979, No. 751, § 5; 1981, No. 257, § 3; A.S.A. 1947, § 82-2115; Acts 1991, No. 739, § 7.

20-64-509. Penalties.

(a) After notice and hearing, whenever the Arkansas State Board of Pharmacy has found a licensee to have committed any act enumerated in § 20-64-508, the board shall have the power to impose a civil penalty and may order the license to be suspended until the penalty is paid.

(b) Before imposing any civil penalty, the board shall determine that the public health and welfare would not be impaired by the imposition of the penalty and that payment of the penalty will achieve the desired disciplinary purposes.

(c) No penalty imposed by the board shall exceed one thousand dollars (\$1,000) per violation, nor shall the board impose a penalty on a licensee where the license has been revoked by the board for a violation.

(d) Each instance where a federal, state, or local law or regulation is violated shall constitute a separate violation.

(e) The power and authority of the board to impose penalties is not to be affected by any other civil or criminal proceeding concerning the same violation, nor shall the imposition of a penalty preclude the board from imposing other sanctions short of revocation.

History. Acts 1991, No. 739, § 8.

20-64-510. Hearing procedures.

The procedure for notice, hearing, and appeals therefrom shall be that of the Arkansas State Board of Pharmacy set forth in § 17-92-313, and that of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1991, No. 739, § 9.

20-64-511. Violations.

A person violating any provision of this subchapter shall be guilty of a Class A misdemeanor.

History. Acts 1991, No. 739, § 10.

20-64-512. Inspection of records.

(a)(1) The Arkansas State Board of Pharmacy may conduct inspections upon all premises purporting or appearing to be used by a person licensed under this subchapter.

(2) The board in its discretion may accept a satisfactory inspection by the United States Food and Drug Administration or a state agency of another state which the board determines to be comparable to that made by the United States Food and Drug Administration or the board.

(b) A licensed person may keep records at a central location apart from the principal office of the licensee or the location at which the drugs were stored and from which they are distributed.

History. Acts 1991, No. 739, § 11.

20-64-513. Injunctive powers.

The Arkansas State Board of Pharmacy may, in its discretion and in addition to various remedies provided by law under this subchapter, apply to a court having competent jurisdiction over the parties and subject matter for a writ of injunction to restrain violations of this subchapter or of any conduct which constitutes a clear and present danger to the public health and safety.

History. Acts 1991, No. 739, § 12.

SUBCHAPTER 6 — ALCOHOL AND DRUG ABUSE PREVENTION GENERALLY

SECTION.

20-64-601. [Repealed.]

20-64-602. Division of Aging, Adult, and Behavioral Health Services — Powers and duties.

SECTION.

20-64-603. Director of the Department of Human Services — Administration of state plans.

20-64-604, 20-64-605. [Repealed.]

Cross References. Department of Human Services, organization, § 25-10-102.

Effective Dates. Acts 1977, No. 644, § 7: July 1, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the establishment of an Office of Alcohol and Drug Abuse Prevention located under the Director's Office of the Department of Social and Rehabilitative Services will expedite the efficient administration of the laws of

this State providing for the services rendered to those who are either alcohol or drug abusers, and that it is essential that this Act be passed within sufficient time to permit the continuation of these services. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1977."

20-64-601. [Repealed.]

Publisher's Notes. This section, concerning creation of the Office of Alcohol and Drug Abuse Prevention, was repealed by Acts 2013, No. 1107, § 19. The section

was derived from Acts 1977, No. 644, § 1; A.S.A. 1947, § 82-2132; Acts 2007, No. 251, § 4; 2007, No. 827, § 171.

20-64-602. Division of Aging, Adult, and Behavioral Health Services — Powers and duties.

(a) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall:

(1) Coordinate all state and federally funded programs dealing with alcohol and drug abuse in the state;

(2) Provide information to the public on the problems and needs of alcohol and drug abusers;

(3) Make evaluations of the effectiveness and efficiency of various agencies and programs relating to alcohol and drug abuse; and

(4) Exercise all authority not inconsistent with the provisions of this subchapter as may be necessary to carry out the purposes and intent of this subchapter.

(b) The duties and responsibilities of the division shall include the following:

(1) Coordinate all state and federally funded programs, services, and activities relating to the prevention, treatment, rehabilitation, education intervention, and training of alcoholics and persons with alcohol and other drug abuse-related problems;

(2) Develop, administer, and implement a state plan for alcohol abuse and drug abuse prevention as defined in Pub. L. No. 92-255, or its successor, and develop reports on state and local activities in alcohol and drug abuse prevention with recommendations for allocations of resources by refining goals and establishing priorities;

(3) Sponsor, encourage, and conduct research into the causes, nature, and treatment of alcoholism, alcohol abuse, and drug abuse and serve as a central source of information and data collection regarding alcohol abuse and drug abuse in this state;

(4) Serve in a liaison capacity between the state and local communities and the United States Government with respect to alcohol abuse and drug abuse programs and, subject to the approval of the Director of the Department of Human Services, enter into agreements with and make commitments on behalf of the State of Arkansas to meet requirements for obtaining federal assistance or grants for partially financing alcohol abuse and drug abuse programs in the state;

(5) Divide the state into appropriate regions for the purpose of planning and the provision of services;

(6) As may be deemed necessary, establish district, regional, or other substate advisory councils to help carry out the duties of the division;

(7) Review, on a continuing basis, existing and proposed state statutes relating to alcohol abuse and drug abuse education, prevention, intervention, treatment rehabilitation, and training and make appropriate recommendations for legislation to the director and the General Assembly;

(8) Review, on a continuing basis, existing and proposed rules, policies, programs, and procedures of state agencies and political subdivisions concerning alcohol and drug abuse and recommend to the appropriate agency or political subdivision changes in or additions to the rules, policies, programs, and procedures;

(9) Review those budget items proposed by other state agencies which are intended for alcohol or drug abuse prevention, intervention, treatment, education, rehabilitation, and training services and make recommendations to the director;

(10) Determine the training and orientation needs of professionals, paraprofessionals, supervisors, managers, and other persons in the public and private sectors who come in contact with those persons affected directly or indirectly with alcohol or drug abuse problems or who may impact in a preventive way with individuals who might otherwise become dependent upon alcohol or other drugs;

(11) Assist in the development of programs designed to meet identified needs;

(12) Provide technical assistance, guidance, consultation, information, and other appropriate services to local programs, local government, district and regional bodies, and state agencies regarding the creation or modification of alcohol or drug abuse programs and procedures;

(13) Establish and apply criteria for evaluation of:

(A) The effectiveness of alcohol or drug abuse programs conducted in this state; and

(B) The accuracy of information contained in and the effectiveness of literature and audiovisual aids prepared to combat alcohol and drug abuse;

(14) Specify uniform methods for keeping statistical information on all individuals receiving services related to the use or misuse of alcohol and drugs and also develop and maintain a centralized data collection and dissemination system for alcohol and drug abuse programs and activities consistent with federal and state statutes and regulations;

(15) Prepare an annual report to coincide with appropriate federal reports to be submitted to the advisory council, the director, and the Governor describing activities of the division and the accomplishments and effectiveness of its programs and also prepare special reports as deemed necessary for the advisory council to aid in the fulfillment of its advisory responsibilities;

(16) Develop policies, plans, and programs sponsoring and encouraging research and prevention activities in this state, especially in the categories of children and youth, women, minorities, senior citizens, and incarcerated persons but not limited to these areas;

(17) Request, as deemed necessary, reports in sufficient detail for various departments of state government regarding their alcohol or drug abuse program activities;

(18) Cooperate with and assist and solicit the cooperation and assistance of appropriate state agencies, community mental health centers and clinics, hospitals, doctors, law enforcement officials, courts, ministers, and any and all other public or private agencies or organizations involved in or dedicated to providing services to those persons who have alcohol or drug abuse-related problems;

(19) Develop and promulgate standards, rules, and regulations for accrediting, certifying, and licensing alcohol and drug abuse prevention, treatment, and rehabilitation programs and facilities within the state, under the supervision and direction of the director, provided that the standards, rules, and regulations shall not supersede standards, rules, and regulations promulgated by other state agencies for programs or facilities whose primary mission is not alcohol and drug abuse prevention, treatment, and rehabilitation;

(20) Review the regulations, guidelines, requirements, and procedures of state and federally funded operating agencies in terms of their consistency with state alcohol and drug abuse prevention policies,

priorities, procedures, and objectives and assist the agencies in making changes therein as may be appropriate;

(21) Maintain a liaison with all state and local agencies concerned with drug traffic prevention;

(22) Conduct annual site visits to all state and federally funded alcohol and drug abuse programs and facilities to determine their compliance with the standards, rules, and regulations for accrediting, certifying, and licensing as set forth in subdivision (19) of this section;

(23) Apply for and assist others in applying for state, private, or federal grants-in-aid and, with the advice and counsel of the advisory council, approve applications for state and federal grants and enter into grants and contracts with public agencies, institutes of higher education, and private organizations or individuals for the purpose of carrying out research, prevention, education, training, treatment, intervention, and rehabilitation activities or special projects which bear directly on the problems related to alcohol and drug abuse or misuse. The contracts or grants may be entered into for these purposes without performance bonds;

(24) Be the primary agency responsible for receiving and disbursing all state, federal, and other public moneys collected for the purpose of combating alcohol and drug abuse-related problems in this state and to account for such receipts and disbursements as are made; and

(25) Do and perform all other actions and exercise all other authority not inconsistent with the provisions of this subchapter as may be necessary to carry out the purposes and intent of this subchapter.

History. Acts 1977, No. 644, § 1; A.S.A. 1947, § 82-2132; Acts 2013, No. 1107, § 20; 2017, No. 913, § 92.

Amendments. The 2013 amendment substituted “Division of Behavioral Health Services” for “Bureau of Alcohol and Drug Abuse Prevention” in the section heading; substituted “Division of Behavioral Health Services” for “Bureau of Alcohol and Drug Abuse Prevention” in the introductory language of (a); and substituted “division” for “bureau” in the introductory language of (b), (b)(6), and (b)(15).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Behavioral Health Services” in the introductory language of (a).

U.S. Code. Pub. L. No. 92-255, referred to in this section, was codified as 21 U.S.C. §§ 1101-1194, several sections of which are now repealed, omitted, or transferred.

For redesignated, transferred provisions, see 42 U.S.C. §§ 2900ee-1, 2900ee-2, and 2900ee-3.

20-64-603. Director of the Department of Human Services — Administration of state plans.

The Director of the Department of Human Services shall be the single state authority and shall have primary responsibility for administering the state plan on alcohol abuse and alcoholism and the state plan on drug abuse prevention.

History. Acts 1977, No. 644, § 1; A.S.A. 1947, § 82-2132.

20-64-604, 20-64-605. [Repealed.]

Publisher's Notes. These sections, concerning the creation, membership, meetings, powers and duties of the Alcohol and Drug Abuse Authority, were repealed by Acts 1997, No. 250, § 202. The sections were derived from the following sources:

20-64-604. Acts 1977, No. 644, § 4; A.S.A. 1947, § 82-2135; Acts 1987, No. 607, § 1.

20-64-605. Acts 1977, No. 644, § 4; A.S.A. 1947, § 82-2135.

SUBCHAPTER 7 — PERSONS ADDICTED TO ALCOHOL

SECTION.

20-64-701. Legislative findings.

20-64-702. Definitions.

20-64-703. Construction.

20-64-704. Division of Aging, Adult, and Behavioral Health Services — Powers and duties.

20-64-705. Division of Aging, Adult, and Behavioral Health Services — Power to accept gifts.

SECTION.

20-64-706. Division of Aging, Adult, and Behavioral Health Services — Rules.

20-64-707. Division of Aging, Adult, and Behavioral Health Services — Cooperation by other departments.

20-64-708 — 20-64-716. [Repealed.]

Cross References. Fund to pay defense costs for indigent persons, § 14-20-102.

Title XX Social Security Funds, § 19-7-701 et seq.

Effective Dates. Acts 1955, No. 411, § 20: Mar. 29, 1955. Emergency clause provided: "Because Arkansas does not have a central coordinating agency to better use existing services of the State for education about and prevention of alcohol-

ism; because the State's facilities are not adequate to treat and rehabilitate alcoholics; because alcoholism is an extremely important public, social, health and economic problem; and because the problems of alcoholism are of major importance to the nation as a whole, an emergency and an imperative public necessity are hereby declared to exist, and this act shall take effect and be in force from and after its passage, and it is so enacted."

RESEARCH REFERENCES

ALR. Alcoholism as ground for discharge justifying denial of unemployment benefits. 64 A.L.R.4th 1151.

Misconduct involving intoxication as ground for disciplinary action against attorney. 1 A.L.R.5th 874.

U. Ark. Little Rock L.J. Sallings, Survey of Arkansas Laws, 3 U. Ark. Little Rock L.J. 277.

CASE NOTES

Cited: Burr v. Pryor, 468 F. Supp. 1314 (E.D. Ark. 1979).

20-64-701. Legislative findings.

(a) The purpose of this subchapter is to help prevent broken homes and the loss of life, health, money, and property by creating an agency which shall coordinate the efforts of all interested and affected state and local agencies; develop educational and preventative programs; promote and aid study and research relating to problems of alcoholism; and promote the establishment of constructive programs for treatment aimed at the reclamation and rehabilitation of alcoholics.

(b) Alcoholism is recognized as an illness and a public health problem affecting the general welfare and economy of the state and, as an illness, is subject to treatment and abatement.

(c) The sufferer of alcoholism is recognized as one worthy of treatment and rehabilitation.

(d) The need for proper and sufficient facilities, programs, and procedures within the state for the study, control, and treatment of alcoholism is recognized.

(e) It is contemplated and intended that this subchapter shall not become involved with or become a vehicle for either the commonly called "dry" or "wet" movements, for it is recognized that alcoholism is a problem irrespective of any laws relating to the manufacture, sale, or consumption of alcoholic beverages.

(f) It is declared that the procedure for commitment of alcoholics, as provided for in this subchapter, is not punitive but is a committal for treatment of an illness affecting not only the individual involved but also the public welfare.

History. Acts 1955, No. 411, § 1; A.S.A. 1947, § 83-701.

20-64-702. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that the person has lost the power of self-control with respect to the use of such beverages, or who while chronically and habitually under the influence of alcoholic beverages endangers public morals, health, safety, or welfare;

(2) "Alcoholic beverages" includes alcoholic spirits, liquors, wines, beer, and every liquid or fluid containing alcohol which is capable of being consumed by human beings and produces intoxication in any form or in any degree;

(3) "Alcoholism" has reference to any condition of abnormal behavior or illness resulting directly or indirectly from the chronic and habitual use of alcoholic beverages;

(4) "Division" means the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services; and

(5) "Hospital board" means the Department of Human Services State Institutional System Board.

History. Acts 1955, No. 411, § 3; A.S.A. 1947, § 83-703; Acts 2017, No. 913, § 93.

A.C.R.C. Notes. Pursuant to Acts 2013, No. 1107, § 48, subdivision (4) has been corrected to refer to the Division of Behavioral Health Services of the Department of

Human Services.

Amendments. The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Behavioral Health Services” in (4).

20-64-703. Construction.

This subchapter shall be liberally construed to accomplish the purposes sought in it.

History. Acts 1955, No. 411, § 2; A.S.A. 1947, § 83-702.

20-64-704. Division of Aging, Adult, and Behavioral Health Services — Powers and duties.

The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall have the following duties and functions:

(1) Carry on a continuing study of the problems of alcoholism in this state and seek to focus public attention on the problems;

(2) Establish cooperative relationships with other state and local agencies, hospitals, clinics, public health, welfare, and law enforcement authorities, educational and medical agencies and organizations, and other related public and private groups;

(3) Promote or conduct educational programs on alcoholism, purchase and provide books, films, and other educational material, furnish funds or grants to the Department of Education, institutions of higher education, and medical schools for study and research, and modernize instruction regarding the problems of alcoholism;

(4) Provide for treatment and rehabilitation of alcoholics and allocate funds for:

(A) The establishment of local alcoholic clinics, with or without short-term hospitalization facilities, by providing funds for not to exceed seventy-five percent (75%) of the total operating cost of the clinics operated by a city or a county;

(B) Providing treatment for those alcoholics needing from five (5) to ninety (90) days' hospitalization, whether voluntary patients or those admitted on court order, by furnishing the Department of Human Services State Institutional System Board all of the funds needed for the proper operation of segregated wards for treatment of the patients. The funds and necessary personnel shall be in addition to all funds and personnel provided the hospital board in the regular departmental appropriation bill;

(C) Contracting with hospitals or institutions not under its control for the care, custody, and treatment of alcoholics; and

(D) Providing for the detention, care, and treatment of recalcitrant alcoholics and alcoholics with long police court records, by furnishing funds for the operation of farm or colony-type facilities under the

provisions of subdivision (4)(A) or subdivision (4)(B) of this section; and

(5) While the division necessarily must, and does, have discretion as to proportions in which it allocates funds to the various aspects of this problem, it is contemplated and intended that the division shall make every reasonable effort not to concentrate too largely on any one (1) phase of the problem at the expense or to the detriment of other phases. For example, but not limited to, the following phases:

(A) That research should not be slowed because of funds directed to treatment, and vice versa;

(B) That treatment should not be slowed because of funds directed to rehabilitation, and vice versa; and

(C) That rehabilitation should not be slowed because of funds directed to research, and vice versa.

History. Acts 1955, No. 411, § 5; A.S.A. 1947, § 83-705; Acts 2013, No. 1107, § 21; 2017, No. 913, § 94.

Amendments. The 2013 amendment substituted “division” for “bureau” throughout (5).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Behavioral Health Services” in the section heading and in the introductory language.

20-64-705. Division of Aging, Adult, and Behavioral Health Services — Power to accept gifts.

(a)(1) The deputy director, on behalf of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, may receive any federal means, grants, contributions, gifts, and loans which are payable or distributable to the State of Arkansas by the United States Government or any of its agencies or instrumentalities, under any existing or future federal laws or statutes or rules or regulations of the agencies or instrumentalities, received for or on account of any of the functions performable by the division.

(2) The division may also receive gifts, grants, donations, fees, conveyances, or transfers of money and property, both real and personal, from private and public sources, to effectuate the purposes of this subchapter.

(b) The deputy director, on behalf of the division, shall sell or dispose of such real or personal property as the division deems advisable, upon specific authorization of the division.

(c) Any funds and income from any property so furnished or transferred to the deputy director on behalf of the division shall be placed in the State Treasury in a special fund called the Alcohol and Drug Abuse Prevention Fund Account [repealed] and expended in the same manner as other state moneys are expended, upon warrants drawn by the comptroller upon the order of the division.

(d) Any of the moneys, funds, and property described in this section are appropriated for the purpose of carrying out the provisions of this subchapter.

History. Acts 1955, No. 411, § 7; A.S.A. 1947, § 83-707; Acts 2013, No. 1107, § 22; 2017, No. 913, § 94.

Amendments. The 2013 amendment substituted “Division of Behavioral Health Services” for “Bureau of Alcohol and Drug Abuse Prevention” in the section heading; substituted “Division of Behavioral Health Services” for “bureau” in

(a)(1); and substituted “division” for “bureau” once in (a)(1), (a)(2) and throughout (b) and (c).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Behavioral Health Services” in the section heading and (a)(1).

20-64-706. Division of Aging, Adult, and Behavioral Health Services — Rules.

The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall be responsible for the adoption of all policies and shall make all rules appropriate to the proper accomplishment of its functions under this subchapter and to the allocation of its funds.

History. Acts 1955, No. 411, § 8; A.S.A. 1947, § 83-708; Acts 2013, No. 1107, § 23; 2017, No. 913, § 94.

Amendments. The 2013 amendment substituted “Division of Behavioral Health Services” for “Bureau of Alcohol and Drug Abuse Prevention” in the section heading and in the section.

The 2017 amendment, in the section heading, substituted “Division of Aging,

Adult, and Behavioral Health Services” for “Division of Behavioral Health Services” and deleted “and regulations” following “Rules”; and, in the section, substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services” for “Division of Behavioral Health Services” and deleted “and regulations” following “rules”.

20-64-707. Division of Aging, Adult, and Behavioral Health Services — Cooperation by other departments.

(a) To effectuate the purpose of this subchapter and to make maximum use of existing facilities and personnel, it is the duty of all departments and agencies of the state government and all officers and employees of the state, when requested by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, to cooperate with it in all activities consistent with their proper respective functions.

(b) This section does not give the division control over existing facilities, institutions, or agencies, or require the facilities, institutions, or agencies to serve the division inconsistently with their respective functions, or with the authority of their respective offices, or with the laws and regulations governing their respective activities, or give the division power to make use of any private institution or agency without the consent of the private institution or agency, or to pay a private institution or agency for services which a public institution or agency is willing and able to perform adequately.

History. Acts 1955, No. 411, § 6; A.S.A. 1947, § 83-706; Acts 2013, No. 1107, § 24; 2017, No. 913, § 94.

Amendments. The 2013 amendment substituted “Division of Behavioral Health Services” for “Bureau of Alcohol

and Drug Abuse Prevention” in the section heading and (a); and substituted “division” for “bureau” throughout (b).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Behavioral Health Services” in the section head-

ing and (a); substituted “is the duty” for “shall be the duty” in (a); and, in (b), substituted “This section does not give” for “Nothing in this section shall be construed as giving”, “require the facilities” for “as requiring the facilities” and “give the division” for “as giving the division”.

20-64-708 — 20-64-716. [Repealed.]

Publisher’s Notes. These sections, concerning treatment of alcoholics, were repealed by Acts 1989 (3rd Ex. Sess.), No. 10, § 24. The sections were derived from the following sources:

- 20-64-708. Acts 1955, No. 411, § 9; 1965, No. 485, § 1; 1971, No. 203, § 1; A.S.A. 1947, § 83-709.
- 20-64-709. Acts 1955, No. 411, § 12; A.S.A. 1947, § 83-712.
- 20-64-710. Acts 1955, No. 411, § 17; A.S.A. 1947, § 83-717.
- 20-64-711. Acts 1955, No. 411, § 10; A.S.A. 1947, § 83-710.

- 20-64-712. Acts 1955, No. 411, § 11; A.S.A. 1947, § 83-711.
- 20-64-713. Acts 1955, No. 411, § 13; A.S.A. 1947, § 83-713.
- 20-64-714. Acts 1955, No. 411, § 14; 1961, No. 177, § 1; A.S.A. 1947, § 83-714.
- 20-64-715. Acts 1955, No. 411, § 15; A.S.A. 1947, § 83-715.
- 20-64-716. Acts 1955, No. 411, § 16; A.S.A. 1947, § 83-716.

For current law, see subchapter 8 of this chapter.

SUBCHAPTER 8 — PERSONS ADDICTED TO ALCOHOL OR DRUGS

SECTION.

- 20-64-801. Definitions.
- 20-64-802. Jurisdiction.
- 20-64-803. Civil immunity.
- 20-64-804. Habeas corpus.
- 20-64-805. Inspections — Procedures.
- 20-64-806 — 20-64-809. [Reserved.]
- 20-64-810. Voluntary admissions.
- 20-64-811. Continued detention.
- 20-64-812. Absence from receiving facility or program.
- 20-64-813, 20-64-814. [Reserved.]
- 20-64-815. Petition for involuntary commitment.
- 20-64-816. Petition for immediate detention.
- 20-64-817. Statement of rights.

SECTION.

- 20-64-818, 20-64-819. [Reserved.]
- 20-64-820. Appointment of counsel.
- 20-64-821. Initial hearing — Determination — Evaluation.
- 20-64-822. Pleadings — Involuntary commitment.
- 20-64-823. Filing of petition — Legal representation.
- 20-64-824. Additional commitment.
- 20-64-825. Voluntary status.
- 20-64-826. Early release.
- 20-64-827. Appeals.
- 20-64-828. Presumption of competency.
- 20-64-829. False statements — Penalty.
- 20-64-830. Liability for treatment — Rules.

Publisher’s Notes. Acts 1971, No. 433, § 1, provided: “It is hereby found and determined by the General Assembly that the laws relating to the State Hospital, mental health, and mentally ill persons have been enacted piecemeal over a period of many years and that a great number of these laws are duplicating, conflicting, outmoded, and in urgent need of clarification and codification. It is the purpose and

intent of the General Assembly in enacting this Act to clarify, update, and codify the various laws of the State relating to the State Hospital, mental health, and mentally ill persons.”

Acts 1971, No. 433, ch. 10, § 1, provided: “It is the specific intent of the codification of the mental health laws contained in this Act to only effect those laws pertaining to mental health. Nothing in

this Act shall be deemed to repeal or modify the provisions of Act 411 of 1955. No other laws shall be affected in any manner, nor shall the inclusion of such laws within this code in any way repeal or affect those laws as they otherwise apply."

Former subchapter 8, concerning drug addicts, was repealed by Acts 1989 (3rd Ex. Sess.), No. 10, § 23. The former subchapter was derived from the following sources:

20-64-801. Acts 1971, No. 433, ch. 4, § 1; A.S.A. 1947, § 59-901.

20-64-802. Acts 1965, No. 64, § 2; 1979, No. 898, § 16; A.S.A. 1947, § 82-1052.

20-64-803. Acts 1971, No. 433, ch. 4, § 3; A.S.A. 1947, § 59-903.

20-64-804. Acts 1971, No. 433, ch. 4, § 4; A.S.A. 1947, § 59-904.

20-64-805. Acts 1971, No. 433, ch. 4, § 5; A.S.A. 1947, § 59-905.

20-64-806. Acts 1971, No. 433, ch. 4, § 7; A.S.A. 1947, § 59-907.

20-64-807. Acts 1971, No. 433, ch. 4, § 6; A.S.A. 1947, § 59-906.

20-64-808. Acts 1971, No. 433, ch. 4, § 7; A.S.A. 1947, § 59-907.

20-64-809. Acts 1971, No. 433, ch. 4, § 8; A.S.A. 1947, § 59-908.

20-64-810. Acts 1971, No. 433, ch. 4, § 9; A.S.A. 1947, § 59-909.

20-64-811. Acts 1971, No. 433, ch. 4, § 10; A.S.A. 1947, § 59-910.

Acts 1989 (3rd Ex. Sess.), No. 10, § 27, provided: "The various provisions and parts of this Act are declared severable and if any section or part of a section, provision or part of a provision, herein is declared unconstitutional, inappropriate or invalid by any court of competent jurisdiction, such holding shall not invalidate or effect the remainder of the Act."

Effective Dates. Acts 1989 (3rd Ex. Sess.), No. 10, § 28: Nov. 6, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the present laws concerning commitment of persons addicted to alcohol or drugs are in need of revision. It is further found that for the effective administration of this Act, this Act should become effective immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

RESEARCH REFERENCES

ALR. Liability of physician for prescribing drug to known drug addict. 42 A.L.R.4th 586.

Prosecution of mother for prenatal substance abuse based on endangerment of or delivery of controlled substance to the child. 70 A.L.R.5th 461.

Am. Jur. 25 Am. Jur. 2d, Drugs, § 266 et seq.

C.J.S. 14 C.J.S., Chemical Dependents, § 1 et seq.

U. Ark. Little Rock L.J. Survey, Civil Procedure, 12 U. Ark. Little Rock L.J. 603.

20-64-801. Definitions.

As used in this subchapter:

(1) "Administrator" refers to the chief administrative officer or executive director of any private or public facility or program designated as a receiving facility or program by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services;

(2) "Detention" refers to any confinement of a person against his or her wishes and begins either:

(A) When a person is involuntarily brought to a receiving facility or program;

(B) When the person appears for the initial hearing; or

(C) When a person on a voluntary admission is in a receiving facility or program pursuant to § 20-64-810;

(3) "Evaluation" means an assessment prepared by a receiving facility to include a description of the existence and extent of the person's addiction to alcohol or drugs;

(4) "Gravely disabled" refers to a person who, if allowed to remain at liberty, is substantially likely, by reason of addiction to alcohol or other drugs, to physically harm himself or herself or others as a result of inability to make a rational decision to receive medication or treatment, as evidenced by:

(A) Inability to provide for his or her own food, clothes, medication, medical care, or shelter;

(B) An inability to avoid or protect himself or herself from severe impairment or injury without treatment; or

(C) Placement of others in a reasonable fear of violent behavior or serious physical harm to them;

(5) "Homicidal" refers to a person who is addicted to alcohol or drugs and poses a significant risk of physical harm to others as manifested by recent overt behavior evidencing homicidal or other violent assaultive tendencies;

(6) "Person" shall mean a citizen of the State of Arkansas who is eighteen (18) years of age or older;

(7) "Receiving facility or program" refers to a residential, inpatient, or outpatient treatment facility or program which is designated within each geographical area of the state by the division to accept the responsibility for care, custody, and treatment of persons voluntarily admitted or involuntarily committed to the facility or program; and

(8) "Suicidal" refers to a person who is addicted to alcohol or other drugs and by reason thereof poses a substantial risk to himself or herself as manifested by evidence of, threats of, or attempts at suicide or serious self-inflicted bodily harm, or by evidence of other behavior or thoughts that create a grave and imminent risk to his or her physical condition.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 1; 1991, No. 150, § 1; 1995, No. 1268, § 1; 2013, No. 1107, §§ 25, 26; 2017, No. 913, § 95.

Amendments. The 2013 amendment substituted "Division of Behavioral Health Services" for "Bureau of Alcohol and Drug Abuse Prevention" in (1); de-

leted (2) and redesignated the remaining subdivisions accordingly; and substituted "division" for "bureau" in (7).

The 2017 amendment substituted "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "Division of Behavioral Health Services" in (1).

20-64-802. Jurisdiction.

The circuit courts of this state shall have exclusive jurisdiction for the involuntary commitment procedures initiated pursuant to this subchapter. The circuit judge may conduct hearings pursuant to this subchapter in a receiving facility or program where the person is detained or residing at the Arkansas State Hospital or within any county of his or her judicial district.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 2.

20-64-803. Civil immunity.

The prosecuting attorney, deputy prosecuting attorneys, the Prosecutor Coordinator, law enforcement officers, governing boards of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, employees of the division, governing boards of designated receiving facilities, and employees of designated receiving facilities and programs shall be immune from civil liability for performance of duties imposed by this subchapter.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 19; 1995, No. 1268, § 2; 1997, No. 1246, § 1; 2013, No. 1107, § 27; 2017, No. 913, § 96.

Amendments. The 2013 amendment substituted “Division of Behavioral Health Services” for “Bureau of Alcohol

and Drug Abuse Prevention” and “division” for “bureau”.

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services” for “Division of Behavioral Health Services”.

20-64-804. Habeas corpus.

Nothing in this subchapter shall in any way restrict the right of any person to attempt to secure his or her freedom by a habeas corpus proceeding as provided by current Arkansas law.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 20.

20-64-805. Inspections — Procedures.

(a) To assure compliance with this subchapter, the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, through its authorized agents, may visit or investigate any receiving facility or program to which persons are admitted or committed under this subchapter.

(b) The division shall promulgate written procedures to implement this subchapter on or before July 1, 1995. The provisions shall:

(1) Designate receiving facilities or programs within prescribed geographical areas of the state for purposes of voluntary admissions or involuntary commitments under this subchapter; and

(2) Establish ongoing mechanisms, guidelines, and regulations for review and refinement of the treatment programs offered in the receiving facilities or programs for alcohol and other drug abuse throughout this state.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 21; 1995, No. 1268, § 3; 2013, No. 1107, § 28; 2017, No. 913, § 97.

Amendments. The 2013 amendment substituted “Division of Behavioral

Health Services” for “Bureau of Alcohol and Drug Abuse Prevention” in (a); and substituted “division” for “bureau” in (b).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral

Health Services of the Department of Human Services” for “Division of Behavioral Health Services” in (a).

20-64-806 — 20-64-809. [Reserved.]

20-64-810. Voluntary admissions.

Any person who believes himself or herself to be addicted to alcohol or other drugs may apply to the administrator or his or her designee of a receiving facility or program for admission. If the administrator or his or her designee shall be satisfied after examination of the applicant that he or she is in need of treatment and will be benefited thereby, the applicant may be received and cared for in the receiving facility or program for such a period of time as the administrator or his or her designee shall deem necessary for the recovery and improvement of the person, provided that the person agrees at all times to remain in the receiving facility or program.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 3; 1995, No. 1268, § 4.

20-64-811. Continued detention.

(a) If at any time the person who has voluntarily admitted himself or herself to a receiving facility or program makes a request to leave, the administrator or his or her designee may file or cause to be filed a petition for involuntary commitment.

(b) If the administrator or his or her designee determines that the person meets the criteria set forth in this subchapter for involuntary commitment and that release would place the person in imminent danger of death or serious bodily harm, the administrator or his or her designee shall file or cause to be filed a petition for involuntary commitment and shall append thereto a request for continued detention.

(c) The request for continued detention shall be verified and shall:

(1) State with particularity the facts personally known to the affiant which establish reasonable cause to believe the person is in imminent danger of death or serious bodily harm;

(2) Identify the receiving facility or program in which the person is being detained; and

(3) Contain a specific prayer that the person be involuntarily committed and that detention be continued.

(d)(1) The person shall be considered to be held by detention pending judicial determination of the petition for involuntary commitment and continued detention. Any person detained pending judicial determination shall, within two (2) hours of his or her request to leave the receiving facility, be provided with a copy of the petition for involuntary commitment and request for continued detention.

(2) The person shall be presented with an acknowledgment of receipt of the petition for involuntary commitment and request for continued

detention. If the person refuses to sign the acknowledgment, this refusal shall be noted on the person's chart and shall be attested by two (2) eyewitnesses on a second document. An original of said attestation shall be furnished to the court. Either a signed acknowledgment or completed attestation shall be sufficient to prove personal service of the petition.

(e) The petition shall be filed and presented to a circuit judge on or before 5:00 p.m. the next day, exclusive of weekends and holidays, after the person makes a request to leave the receiving facility or program. Thereupon, the judge shall review the petition and request for continued detention and determine whether there is reasonable cause to believe the person meets the criteria set forth in this subchapter for involuntary commitment and whether release would place the person in immediate danger of death or serious bodily harm.

(f) If the judge determines that there is reasonable cause to believe that the person meets the criteria set forth in this subchapter for involuntary commitment and that release would place the person in immediate danger of death or serious bodily harm, the judge shall order continued detention pending a hearing to be scheduled and conducted pursuant to § 20-64-821.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 4.

20-64-812. Absence from receiving facility or program.

(a)(1) Treatment staff shall immediately inform the prosecuting attorney of the county where the receiving facility or program is located if, in the opinion of the treatment staff, a person who voluntarily admitted himself or herself meets the criteria for involuntary commitment set forth in this subchapter and the person has absented himself or herself from the receiving facility or program.

(2) The prosecuting attorney shall initiate an involuntary commitment under this subchapter against the person.

(3)(A) Statements made by the prosecuting attorney in furtherance of the petition shall not be deemed to be a disclosure.

(B) Statements made by the treating staff to the prosecuting attorney shall be treated as confidential, and the prosecuting attorney shall remain subject to the confidentiality requirements as set forth in state and federal law and regulations.

(b) If any person shall, during a period of involuntary commitment, absent himself or herself from the receiving facility or program without leave, he or she may be returned by receiving facility or program security personnel or law enforcement officers without further proceedings. The circuit courts of this state are hereby authorized to enter such orders as may be necessary to effect the return.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 5; 1995, No. 1268, § 5.

20-64-813, 20-64-814. [Reserved.]**20-64-815. Petition for involuntary commitment.**

(a) Any person having any reason to believe that a person is homicidal, suicidal, or gravely disabled may file a petition with the clerk of the circuit court of the county in which the person alleged to be addicted to alcohol or other drugs resides or is detained and be represented by the prosecuting attorney or by any other licensed attorney within the State of Arkansas.

(b) The petition for involuntary commitment shall:

(1) State whether the person is believed to be homicidal, suicidal, or gravely disabled;

(2) Describe the conduct, signs, and symptoms upon which the petition is based. The descriptions shall be limited to facts within the petitioner's personal knowledge;

(3) Contain the names and addresses of any witnesses having knowledge relevant to the allegations contained in the petition; and

(4) Contain a specific prayer for commitment of the person to an appropriate designated receiving facility or program, including residential inpatient or outpatient treatment for his or her addiction to alcohol or other drugs.

(c) Personal service of the petition shall be made in accordance with the Arkansas Rules of Civil Procedure and shall include:

(1) A notice of the date, time, and place of hearing; and

(2) A notice that if the person shall fail to appear, the court shall issue an order directing a law enforcement officer to place the person in custody for the purpose of a hearing unless the court finds that the person is unable to appear by reason of physical infirmity or that the appearance would be detrimental to his or her health, well-being, or treatment.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 6; 1995, No. 1268, § 6; 1997, No. 1246, § 2.

20-64-816. Petition for immediate detention.

(a) Any person filing a petition for involuntary commitment may append thereto a petition for immediate detention.

(b) The request for immediate detention shall be verified and shall:

(1) State with particularity facts personally known to the affiant which establish reasonable cause to believe the person is in imminent danger of death or serious bodily harm;

(2) State whether the person is currently detained in a designated receiving facility or program; and

(3) Contain a specific prayer that the person be immediately detained at a designated receiving facility or program pending a hearing.

(c) If, based on the petition for involuntary commitment and request for immediate confinement, the judge finds a reasonable cause to

believe the person meets the criteria set forth in this subchapter for involuntary commitment and that the person is in imminent danger of death or serious bodily harm, the court may grant the request and order a law enforcement officer to place the person in immediate detention at a designated receiving facility or program for treatment pending a hearing to be scheduled and conducted pursuant to § 20-64-821.

(d) Personal service of the petition and order of immediate detention must be made by a law enforcement officer, who shall, at the time of service, take the person into custody and immediately deliver the person to a designated receiving facility or program.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 7; 1991, No. 150, § 2; 1995, No. 1268, § 7; 1997, No. 1246, § 3.

20-64-817. Statement of rights.

Every petition for involuntary commitment shall include or contain as an attachment the following statement of rights:

(1) That the person has the right to effective assistance of counsel, including the right to a court-appointed attorney;

(2) That the person and his or her attorney have the right to be present at all significant stages of the proceedings and at all hearings, except that no attorney shall be entitled to be present upon examination of the person by the treatment staff for the purpose of evaluation or treatment;

(3) That the person has the right to present evidence in his or her own behalf and cross-examine witnesses who testify against him or her;

(4) That the person has the right to remain silent; and

(5) That the person has a right to view and copy all petitions, reports, and documents contained in the court file.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 8.

20-64-818, 20-64-819. [Reserved.]

20-64-820. Appointment of counsel.

(a) If it appears to the court that a person sought to be committed is in need of counsel, counsel shall be appointed immediately upon filing of the petition. Whenever legal counsel is appointed by the court, such court shall determine the amount of the fee, if any, to be paid the attorney so appointed and shall issue an order directing the payment. The amount allowed shall not exceed one hundred fifty dollars (\$150) based upon the time and effort of the attorney and the investigation, preparation, and representation of the client at the court hearings. The court shall have the authority to appoint counsel on a pro bono basis.

(b) The quorum court of each county shall appropriate funds for the purpose of payment of the attorney's fees provided for by this subchap-

ter and upon presentment of a claim accompanied by an order of the circuit court fixing the fee, the same shall be approved by the county quorum court and shall be paid in the same manner as other claims against the county are paid.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 9.

20-64-821. Initial hearing — Determination — Evaluation.

(a) In each case a hearing shall be set by the court within five (5) days, excluding weekends and holidays, of the filing of a petition for involuntary commitment, with a request for continued detention or for involuntary commitment with a request for immediate detention.

(b)(1)(A) A person named in a petition for involuntary commitment who is placed in immediate detention pending a hearing may undergo a screening and assessment within twenty-four (24) hours of the immediate detention.

(B)(i) Except as provided in subdivision (b)(1)(C) of this section, a screening and assessment shall be conducted by a contractor with the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(ii) The division shall assign contractors to conduct screenings and assessments under this subdivision (b)(1).

(iii) The division shall assume the cost of the screening and assessment.

(C)(i) If a person named in a petition for involuntary commitment who is placed in immediate detention pending a hearing declines a screening and assessment by a contractor with the division under subdivision (b)(1)(B) of this section, the person may undergo a screening and assessment by a qualified professional of his or her choosing within twenty-four (24) hours of the immediate detention.

(ii) The person named in the petition for involuntary commitment shall assume the cost of a screening and assessment by a qualified professional of his or her choosing.

(2)(A) The person conducting a screening and assessment under subdivision (b)(1) of this section shall provide a copy of the results of the screening and assessment to the person named in the petition for involuntary commitment and the prosecuting attorney.

(B)(i) The prosecuting attorney may provide a copy to the court.

(ii) The court may consider the contents of the screening and assessment as part of its determination of whether the standards for involuntary commitment apply to the person.

(c) The person named in the original petition may be removed from the presence of the court upon finding that his or her conduct before the court is so disruptive that proceedings cannot be reasonably continued with him or her present.

(d) The petitioner shall appear before the circuit judge to substantiate the petition. The court shall make a determination based upon clear

and convincing evidence that the standards for involuntary commitment apply to the person. If such a determination is made, the person shall be remanded to a designated agent of the division or the designated receiving facility or program for treatment for a period of up to twenty-one (21) days.

(e) Every person remanded for treatment shall have a treatment plan within twenty-four (24) hours of detention.

(f) A copy of the court order committing the person to the designated receiving facility or program for treatment shall be forwarded to the designated receiving facility or program within five (5) working days.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 10; 1991, No. 150, § 3; 1997, No. 1246, § 4; 2011, No. 1140, § 1; 2013, No. 1107, § 29; 2017, No. 913, § 98.

Amendments. The 2013 amendment substituted “Division of Behavioral Health Services” for “Bureau of Alcohol and Drug Abuse Prevention” in

(b)(1)(B)(i); and substituted “division” for “office” throughout the section.

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services” for “Division of Behavioral Health Services” in (b)(1)(B)(i).

20-64-822. Pleadings — Involuntary commitment.

The pleadings in each case shall be deemed to conform to the proof. The court is hereby authorized to enter orders of involuntary commitment pursuant to § 20-47-201 et seq., conforming thereto.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 11.

20-64-823. Filing of petition — Legal representation.

The petition may be filed by the local prosecuting attorney, an attorney representing the petitioner, or pro se. The county shall establish an indigency fund to permit the petitioner to request a court-appointed attorney by filing an affidavit of indigency. The attorney may be allowed a fee of up to one hundred fifty dollars (\$150). Should the circuit court designate a circuit judge in Pulaski County to hear petitions filed for additional periods of commitment pursuant to this subchapter, the Prosecutor Coordinator shall appear for and on behalf of the petitioner and the State of Arkansas before the judge, provided that the hearing is held on the grounds of the Arkansas State Hospital. The representation shall be a part of the official duties of the Prosecutor Coordinator. However, nothing in this section shall prevent the petitioner from retaining his or her own counsel. Thereupon, the Prosecutor Coordinator shall be relieved of the duty to represent the petitioner.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 15.

20-64-824. Additional commitment.

(a) An additional forty-five-day commitment order may be requested if in the opinion of the treatment staff a person remains suicidal, homicidal, or gravely disabled.

(b)(1)(A) Any request for periods of additional commitment pursuant to this section shall be made by a petition verified by the receiving facility or program treatment staff.

(B) The petition shall set forth facts and circumstances forming the basis for the request.

(2) Upon the filing of the petition for additional commitment, all rights enumerated in § 20-64-817 shall be applicable.

(c)(1)(A) A hearing on the petition for additional commitment pursuant to this section shall be held before the expiration of the period of confinement.

(B) The hearing may be held in a receiving facility or program where the person is detained or residing.

(2) A copy of the petition shall be served upon the person sought to be additionally committed, along with a copy forwarded to any attorney who may have represented or may have been appointed to represent the person at the initial hearing.

(d) All testimony shall be recorded under oath and preserved.

(e) The need for additional commitment shall be proven by clear and convincing evidence.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 13; 1997, No. 1246, § 5.

20-64-825. Voluntary status.

(a) At any time during detention, the person may be converted to voluntary status if the person's certified substance abuse counselor files a written statement of consent with the court. The court shall dismiss the petition immediately upon the filing of said statement.

(b) If, upon evaluation, the certified substance abuse counselor determines that the person is not addicted to alcohol or drugs or would benefit by an alternative method of treatment, the counselor shall file a copy of the evaluation with the court along with a request for amendment of the court's order of detention.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 12; 1991, No. 150, § 4.

20-64-826. Early release.

(a) If any person is released from detention before the expiration of the period of commitment, the court may condition the release upon the person's compliance with outpatient treatment for the time not to exceed the duration of the commitment order and at the receiving facility or program as may be specified by the court.

(b) When in the opinion of the professional person in charge of the receiving facility or program providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be provided.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 14; 1997, No. 1246, § 6.

20-64-827. Appeals.

All commitment orders authorized herein shall be considered final and appealable under Rule 2 of the Arkansas Rules of Appellate Procedure — Civil.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 17.

20-64-828. Presumption of competency.

No person admitted voluntarily or committed involuntarily to a receiving facility or program under this subchapter shall be considered incompetent per se by virtue of the admission or commitment.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 16.

20-64-829. False statements — Penalty.

Any person willfully making false statements on a petition for involuntary commitment, petition for involuntary commitment with request for continued detention, or petition for involuntary commitment with request for immediate detention, or who willfully makes false statements for the purpose of inducing another to bring such a petition, knowing the statements to be false, or with reckless disregard as to the truthfulness of the statements shall be guilty of a Class A misdemeanor.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 18.

20-64-830. Liability for treatment — Rules.

(a)(1) Any person legally obligated to support a person in treatment from a receiving facility or program shall pay to the receiving facility or program an amount to be fixed by the receiving facility or program as the cost for treatment.

(2) The amounts shall be a debt of the obligor.

(b)(1) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall promulgate rules specifying the amounts to be fixed as costs and establishing procedures for implementation of this section.

(2) The rules shall set forth costs by reference to the income and assets of the obligor.

History. Acts 1989 (3rd Ex. Sess.), No. 10, § 22; 1995, No. 1268, § 8; 2013, No. 1107, § 30; 2017, No. 913, § 99.

Amendments. The 2013 amendment substituted “Division of Behavioral Health Services” for “Bureau of Alcohol and Drug Abuse Prevention” in (b)(1).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services” for “Division of Behavioral Health Services” in (b)(1).

SUBCHAPTER 9 — ALCOHOL AND DRUG ABUSE TREATMENT PROGRAM LICENSING

SECTION.

- 20-64-901. Purpose.
- 20-64-902. Definition.
- 20-64-903. Authority — Exemptions — Current programs.
- 20-64-904. Licenses.
- 20-64-905. Renewal.

SECTION.

- 20-64-906. Disposition of funds.
- 20-64-907. Reporting requirements.
- 20-64-908. Appeal process.
- 20-64-909. Penalties.
- 20-64-910, 20-64-911. [Expired.]

A.C.R.C. Notes. Identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, § 1, provided:

“(a) The General Assembly finds:

“(1) State government provides vital functions that impact the lives of Arkansas citizens on a daily basis;

“(2) While these functions are important, it is equally important to ensure that state government operates efficiently and effectively to eliminate unnecessary spending of tax dollars and provide timely and quality services to Arkansas citizens; and

“(3) Issues such as the administrative organization of a governmental entity, the appointment structure of a governmental entity’s governing board, and extraneous duties assigned to governmental entities hamper the operation of state government and result in unnecessary expenses and delays in the provision of state services.

“(b) It is the intent of this act to amend provisions of law applicable to certain agencies, task forces, committees, and commission to promote efficiency and effectiveness in the operations of state government as a whole.”

Publisher’s Notes. Former subchapter 9, concerning accreditation of treatment programs, was repealed by Acts 1995, No. 173, § 13. The former sections were derived from the following sources:

- 20-64-901. Acts 1989, No. 597, § 1.
- 20-64-902. Acts 1989, No. 597, § 2.
- 20-64-903. Acts 1989, No. 597, §§ 2, 9.
- 20-64-904. Acts 1989, No. 597, § 6.
- 20-64-905. Acts 1989, No. 597, § 4.
- 20-64-906. Acts 1989, No. 597, § 3.
- 20-64-907. Acts 1989, No. 597, § 7.
- 20-64-908. Acts 1989, No. 597, § 5.
- 20-64-909. Acts 1991, No. 25, § 1.

Effective Dates. Identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, § 129: May 23, 2016. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act revises the membership and duties of certain agencies, task forces, committees, and commissions and repeals other governmental entities; that these revisions and repeals of governmental entities impact the expenses and operations of state government; and that the provisions of this act should become effective as soon as possible to allow for implementation of the new provisions in advance of the upcoming fiscal year. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Gov-

error may veto the bill; or (3) If the bill is overridden, the date the last house over-
vetoed by the Governor and the veto is rides the veto.”

20-64-901. Purpose.

The purpose of this subchapter is to require all persons, partnerships, associations, or corporations holding themselves out to the public as alcohol and drug abuse treatment programs in the State of Arkansas to meet the licensure standards set by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, unless expressly exempted by this subchapter.

History. Acts 1995, No. 173, § 1; 2011, No. 228, § 1; 2013, No. 1107, § 31; 2017, No. 913, § 100.

Amendments. The 2013 amendment deleted “an” following “public as” and “the Office of Alcohol and Drug Abuse Preven-
tion of” following “standards set by” and substituted “programs” for “program”.
The 2017 amendment substituted “Di-
vision of Aging, Adult, and Behavioral
Health Services” for “Division of Behav-
ioral Health Services”.

20-64-902. Definition.

An “alcohol and drug abuse treatment program” means a program that renders or offers to render to a person or group of persons any service that assists the person or group to develop an understanding of alcoholism and drug dependency problems and to define goals and plan courses of action reflecting the person’s or group’s interests, abilities, and needs as affected by alcoholism and drug dependency problems. The definition includes actions taken with the intent of the cessation of harmful or addictive use of alcohol or other drugs. It includes, but is not restricted to, one (1) or more of the following:

- (1) Counseling with individuals, families, or groups;
- (2) Helping persons or families obtain other services appropriate to alcoholism and drug abuse rehabilitation; and
- (3) Engaging in alcoholism and drug abuse research, education, or prevention through the administration of alcoholism and drug abuse counseling.

History. Acts 1995, No. 173, § 2; 2013, No. 1132, § 37.

Amendments. The 2013 amendment substituted “means” for “is” in the intro-
ductory language; and redesignated for-
mer (A) through (C) as (1) through (3).

20-64-903. Authority — Exemptions — Current programs.

(a)(1) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall adopt rules for the licensure of alcohol and drug abuse treatment programs in Arkansas.

(2) All persons, partnerships, associations, or corporations establish-
ing, conducting, managing, or operating and holding themselves out to
the public as alcohol abuse, drug abuse, or alcohol and drug abuse

treatment programs shall be licensed by the division unless expressly exempted under this subchapter.

(3) No person, partnership, association, or corporation will be allowed to receive federal or state funds for treatment services until it has received a license.

(b) The following programs and persons are exempted from the requirements of this subchapter:

(1) Acute care, hospital-based alcohol and drug abuse treatment programs governed by §§ 20-9-201 and 20-10-213;

(2) Members of the clergy, Christian Science practitioners, and licensed professionals working within the standards of their respective professions, including without limitation:

- (A) Attorneys;
- (B) Counselors;
- (C) Nurses;
- (D) Physicians;
- (E) Psychological examiners;
- (F) Psychologists;
- (G) School counselors; and
- (H) Social workers;

(3) Treatment directly administered by the United States Department of Defense or any other federal agency; and

(4) Self-help or twelve-step programs such as Alcoholics Anonymous, Cocaine Anonymous, Narcotics Anonymous, Al-Anon, or Nar-Anon Family Groups.

(c)(1) The division shall license programs, other than methadone programs, that possess current unrestricted alcohol and drug abuse treatment program accreditation from the CARF International or the Council on Accreditation if the programs comply with the following license standards:

- (A) Clinical supervision;
- (B) Health and safety;
- (C) Physical plant;
- (D) Progress note development;
- (E) Treatment plan development; and
- (F) Treatment plan review.

(2)(A) This subsection does not apply to methadone treatment programs operating in the State of Arkansas.

(B) All methadone treatment programs shall be licensed by the division.

History. Acts 1995, No. 173, §§ 3, 4; 1999, No. 12, § 1; 2003, No. 761, § 1; 2011, No. 228, § 2; 2013, No. 1107, § 32; 2013, No. 1132, § 38; 2017, No. 913, § 101.

Amendments. The 2013 amendment by No. 1107 deleted “Office of Alcohol and Drug Abuse Prevention of the” following “The” in (a)(1); and substituted “division” for “office” throughout the section.

The 2013 amendment by No. 1132 substituted “Nar-Anon” for “Narc-Anon” in (b)(4).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral

Health Services” for “Division of Behavioral Health Services” in (a)(1).

20-64-904. Licenses.

(a)(1) A person who immediately before July 28, 1995, was accredited to establish, conduct, manage, or operate an alcohol and drug abuse treatment program under former § 20-64-901 et seq., shall be issued a license under this subchapter without a fee.

(2) The license shall be subject to be renewed at the time that the accreditation would have been due for renewal.

(b)(1) Any person or program desiring to be licensed as an alcohol and drug abuse treatment program shall make application to the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services on forms prescribed by the division and shall furnish the application information required by the division.

(2)(A) Each application for licensure shall be accompanied by a nonrefundable license fee of seventy-five dollars (\$75.00).

(B) An additional fee will be paid by the entity seeking licensure at the end of the licensure review process for costs of the licensure review.

History. Acts 1995, No. 173, §§ 5, 12; 2011, No. 228, § 3; 2013, No. 1107, § 33; 2017, No. 913, § 102.

Amendments. The 2013 amendment, in (b)(1), deleted “Office of Alcohol and Drug Abuse Prevention of the” following

“application to the” and substituted “division” for “office” twice.

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Behavioral Health Services” in (b)(1).

20-64-905. Renewal.

(a) Each alcohol and drug abuse treatment program licensure shall be renewed annually upon a payment of a fee of seventy-five dollars (\$75.00) by January 30 of each year to the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(b) If any person or program covered by this subchapter fails to make application for renewal of his, her, or its license within one (1) year after expiration of the license, the license of the person or entity shall be revoked. That person or entity shall not be issued a new license, unless the person or entity makes application therefor and meets all requirements for licensure in effect at the time the application is filed.

History. Acts 1995, No. 173, § 8; 2013, No. 1107, § 34; 2017, No. 913, § 103.

Amendments. The 2013 amendment substituted “Division of Behavioral Health Services” for “Bureau of Alcohol and Drug Abuse Prevention” in (a).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services” for “Division of Behavioral Health Services” in (a).

20-64-906. Disposition of funds.

(a) All application fees and accreditation costs will be paid to the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(b) The division shall transfer the money to the State Treasury, and the money shall be specially designated for transfer to the Public Health Fund to cover maintenance and operation expenses incurred by the accreditation review process.

History. Acts 1995, No. 1032, § 7; 2013, No. 1107, § 35; 2017, No. 913, § 104.

Amendments. The 2013 amendment subdivided the section as (a) and (b); substituted “Division of Behavioral Health Services” for “Bureau of Alcohol and Drug

Abuse Prevention” in (a); and substituted “division shall” for “bureau will” in (b).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services” for “Division of Behavioral Health Services” in (a).

20-64-907. Reporting requirements.

(a) All persons, partnerships, associations, or corporations operating alcohol and drug abuse treatment programs in the State of Arkansas, whether licensed by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services or expressly exempted from licensure, shall be required to furnish such information at such times and in such form as may be required by the division.

(b) The division shall promulgate regulations and prescribe forms for the implementation of this section.

History. Acts 1995, No. 173, § 10; Acts 2013, No. 1107, § 36; 2017, No. 913, § 105.

Amendments. The 2013 amendment, in (a), substituted “Division of Behavioral Health Services” for “Bureau of Alcohol and Drug Abuse Prevention” and “divi-

sion” for “bureau”; and substituted “division” for “bureau” in (b).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services” for “Division of Behavioral Health Services” in (a).

20-64-908. Appeal process.

(a) The Arkansas Alcohol and Drug Abuse Coordinating Council shall have the power and authority to hear appeals regarding decisions by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services not to license an alcohol, drug, or alcohol and drug abuse treatment program under this subchapter.

(b) All hearings and proceedings under this section shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1995, No. 173, § 11; 2013, No. 1107, § 37; 2017, No. 913, § 106.

Amendments. The 2013 amendment substituted “Division of Behavioral

Health Services” for “Bureau of Alcohol and Drug Abuse Prevention” in (a).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Hu-

man Services” for “Division of Behavioral Health Services” in (a).

20-64-909. Penalties.

(a) Any person, partnership, association, or corporation establishing, conducting, managing, or operating any alcohol, drug, or alcohol and drug abuse treatment program within the meaning of this subchapter without first obtaining licensure shall be guilty of a Class A misdemeanor and upon conviction shall be liable to a fine imposed pursuant to a Class A misdemeanor.

(b) Each day that an alcohol and drug abuse treatment program shall operate after a first conviction shall be considered a Class D felony and upon conviction shall be liable to a fine imposed pursuant to a Class D felony.

History. Acts 1995, No. 173, § 7.

20-64-910, 20-64-911. [Expired.]

Publisher’s Notes. These sections, concerning the creation and duties of the Task Force on Substance Abuse Treatment Services, expired September 30, 2017, pursuant to identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, §§ 44, 45, 127. The sections were derived from the following sources:

20-64-910. Acts 2003, No. 1457, § 1;

2005, No. 64, § 1; 2007, No. 688, § 1; 2009, No. 471, § 1; 2013, No. 1107, § 38; 2016 (3rd Ex. Sess.), No. 2, § 44; 2016 (3rd Ex. Sess.), No. 3, § 44; 2017, No. 913, § 107.

20-64-911. Acts 2003, No. 1457, § 2; 2013, No. 1132, § 39; 2016 (3rd Ex. Sess.), No. 2, § 45; 2016 (3rd Ex. Sess.), No. 3, § 45.

SUBCHAPTER 10 — ALCOHOL AND DRUG ABUSE COORDINATING COUNCIL

SECTION.

20-64-1001. Arkansas Drug Director.

20-64-1002. Arkansas Alcohol and Drug Abuse Coordinating Council — Creation.

SECTION.

20-64-1003. Arkansas Alcohol and Drug Abuse Coordinating Council — Functions, powers, and duties.

A.C.R.C. Notes. Acts 1995, No. 551, § 4, provided: “The Highway Safety Program Advisory Council created by Arkansas Code 12-6-101 is transferred to the Arkansas Alcohol and Drug Abuse Coordinating Council pursuant to a type 3 transfer as defined in Arkansas Code 25-2-106.”

Acts 1995, No. 551, § 5, provided: “The Arkansas Alcohol and Drug Abuse Authority of the Bureau of Alcohol and Drug Abuse Prevention, Arkansas Department of Health is transferred to the Arkansas Alcohol and Drug Abuse Coordinating Council pursuant to a type 3 Transfer as defined in Arkansas Code 25-2-106.”

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the pub-

lic peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-64-1001. Arkansas Drug Director.

(a)(1) There is created within the office of the Governor a position of Arkansas Drug Director, who shall serve at the pleasure of the Governor.

(2) Effective at 12:01 a.m. on July 1, 2005, the position of Arkansas Drug Director is transferred to the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

(b) The Arkansas Drug Director shall serve as the coordinator for development of an organizational framework to ensure that alcohol and drug programs and policies are well planned and coordinated.

(c) The Arkansas Drug Director, in cooperation with the Department of Finance and Administration, shall perform financial monitoring of each drug task force of the state to ensure that grant funds are being expended according to law and to ensure that the drug task force’s financial record system is adequate to provide a clear, timely, and accurate accounting of all asset forfeitures, revenues, and expenditures.

(d)(1) The Arkansas Drug Director shall maintain an office at a location to be determined by the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services. All records required by law to be kept by the Arkansas Drug Director shall be maintained at the office.

(2) The Arkansas Drug Director is authorized to establish and enforce rules regarding the management of the Special State Assets Forfeiture Fund and the maintenance and inspection of drug task force records concerning asset forfeitures, revenues, expenditures, and grant funds.

(3) The Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services is authorized to hire employees to assist in these functions.

History. Acts 1989, No. 855, § 1; 2001, No. 1690, § 3; 2005, No. 1954, § 6; 2017, No. 913, §§ 108, 109.

Amendments. The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services” for “Division of

Behavioral Health Services” in (a)(2) and (d)(3); substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Behavioral Health Services” in (d)(1); and deleted “and regulations” following “rules” in (d)(2).

20-64-1002. Arkansas Alcohol and Drug Abuse Coordinating Council — Creation.

(a) There is hereby established the Arkansas Alcohol and Drug Abuse Coordinating Council, hereafter referred to in this subchapter as the “coordinating council”.

(b) The coordinating council shall be composed of twenty-seven (27) members as follows:

(1) Thirteen (13) members of the coordinating council shall be administrative officers of the following agencies, or their appropriate designees, confirmed by gubernatorial appointment:

(A) The Arkansas Drug Director, who shall serve as Chair of the Arkansas Alcohol and Drug Abuse Coordinating Council;

(B) The Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services;

(C) The Director of the Department of Arkansas State Police;

(D) The Commissioner of Education;

(E) The Director of the Arkansas Department of Transportation;

(F) The Director of the Department of Correction;

(G) The Director of the Department of Finance and Administration;

(H) The Adjutant General of the Arkansas National Guard;

(I) The Attorney General;

(J) The Executive Director of the State Crime Laboratory;

(K) The Director of the Office of Alcohol Testing of the Department of Health;

(L) The Director of the Administrative Office of the Courts; and

(M) The Director of the Department of Community Correction; and

(2) The following persons shall be appointed by the Governor for three-year terms and will not serve more than two (2) consecutive terms:

(A) One (1) police chief, one (1) county sheriff, and one (1) drug court judge;

(B) A prosecuting attorney;

(C) A private citizen not employed by the state or the United States Government;

(D) A director of a publicly funded alcohol and drug abuse treatment program;

(E) A school drug counselor;

(F) A director of a drug abuse prevention program;

(G) A director of a driving while intoxicated program;

(H) A health professional; and

(I) Four (4) members from the state at large who have demonstrated knowledge of or interest in alcohol and drug abuse prevention, at least two (2) of whom shall be recovering persons.

(c) The coordinating council members may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(d) The coordinating council may appoint noncouncil members for PEER review of grants, and the PEER Review Committee members

shall be entitled to reimbursement for actual expenses and mileage to be paid by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services from funds appropriated for its maintenance and operation.

(e) A United States Attorney for Arkansas or his or her designee shall serve on the coordinating council in an advisory capacity.

History. Acts 1989, No. 855, §§ 2, 5; 1995, No. 551, § 1; 1997, No. 250, § 203; 2005, No. 1453, § 1; 2013, No. 1107, §§ 39, 40; 2017, No. 707, § 63; 2017, No. 913, §§ 110, 111.

A.C.R.C. Notes. The reference to “PEER Review of grants” and “PEER Review Committee members” in this section may or may not refer to 42 U.S.C. § 290aa-3(a) or to § 20-9-501 et seq., or both.

Amendments. The 2013 amendment substituted “Division of Behavioral Health Services” for “Office of Alcohol and

Drug Abuse Prevention” in (b)(1)(B) and (d).

The 2017 amendment by No. 707 substituted “Arkansas Department of Transportation” for “Arkansas State Highway and Transportation Department” in (b)(1)(E).

The 2017 amendment by No. 913 substituted “Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services” for “Division of Behavioral Health Services” in (b)(1)(B) and (d).

20-64-1003. Arkansas Alcohol and Drug Abuse Coordinating Council — Functions, powers, and duties.

(a) The Arkansas Alcohol and Drug Abuse Coordinating Council shall have the responsibility for overseeing all planning, budgeting, and implementation of expenditures of state and federal funds allocated for alcohol and drug education, prevention, treatment, and law enforcement.

(b) The council shall have the following functions, powers, and duties:

(1) All federal money received by the State of Arkansas for drug law enforcement, education, or prevention shall be reviewed by the coordinating council for disbursement, accountability, and evaluation; and

(2) The council shall review and coordinate all school-based drug education, prevention, and awareness programs and efforts funded by the state.

(c) The council shall assist community-based prevention councils in planning and coordinating prevention activities, promoting innovative programs, developing stable funding sources, and disseminating current information. These local councils should be racially balanced and shall include at least one (1) representative from each of the following groups:

(1) One (1) law enforcement officer;

(2) One (1) school board member;

(3) One (1) school administrator;

(4) One (1) school teacher;

(5) One (1) parent;

(6) One (1) student;

(7) One (1) alcohol and drug abuse program director; and

(8) One (1) health professional.

(d) The council shall develop training and education programs for criminal justice personnel in drug-related matters in conjunction with the Arkansas Commission on Law Enforcement Standards and Training.

(e)(1) The council shall have authority to develop its rules of procedure to include the establishment of a committee structure for the approval of funding and other purposes.

(2) Committees shall include without limitation a prevention, education, and treatment committee chaired by the Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services, and a law enforcement committee.

(f) The council shall establish advocacy groups among the business community and youth population of this state.

(g) The council shall work with all federal, state, county, and local law enforcement agencies to ensure an integrated system of enforcement activities.

(h) The council shall perform other functions as may be necessary to carry out the functions, powers, and duties as set forth in this subchapter.

History. Acts 1989, No. 855, §§ 3, 4; 1995, No. 551, §§ 2, 3; 2013, No. 1107, § 41; 2017, No. 497, § 23; 2017, No. 913, § 112.

Amendments. The 2013 amendment substituted "Division of Behavioral Health Services" for "Bureau of Alcohol and Drug Abuse Prevention" in (e)(2).

The 2017 amendment by No. 497 substituted "Arkansas Commission on Law

Enforcement Standards and Training" for "Arkansas Law Enforcement Training Academy" in (d).

The 2017 amendment by No. 913, in (e)(2), substituted "without limitation" for "but not be limited to" and "Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services" for "Division of Behavioral Health Services".

SUBCHAPTER 11 — TASK FORCE ON SUBSTANCE ABUSE PREVENTION

SECTION.

20-64-1101 — 20-64-1103. [Expired.]

20-64-1101 — 20-64-1103. [Expired.]

Publisher's Notes. This subchapter, concerning the Task Force on Substance Abuse Prevention, expired by its own terms September 30, 2017, pursuant to identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, §§ 46-48, 127. The subchapter was derived from the following sources:

20-64-1101. Acts 2007, No. 629, § 1; 2016 (3rd Ex. Sess.), No. 2, § 46; 2016 (3rd Ex. Sess.), No. 3, § 46.

20-64-1102. Acts 2007, No. 629, § 1; 2013, No. 1107, § 42; 2016 (3rd Ex. Sess.), No. 2, § 47; 2016 (3rd Ex. Sess.), No. 3, § 47; 2017, No. 913, § 113.

20-64-1103. Acts 2007, No. 629, § 1; 2013, No. 1132, § 40; 2016 (3rd Ex. Sess.), No. 2, § 48; 2016 (3rd Ex. Sess.), No. 3, § 48.

CHAPTERS 65-74

[Reserved.]

SUBTITLE 5. SOCIAL SERVICES

CHAPTER 75

GENERAL PROVISIONS

[Reserved.]

CHAPTER 76

PUBLIC ASSISTANCE GENERALLY

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. ADMINISTRATION GENERALLY.
- 3. SOCIAL SECURITY DISABILITY DETERMINATION.
- 4. GRANTS OF ASSISTANCE.
- 5. ARKANSAS RX PROGRAM. [REPEALED.]
- 6. COMMUNITY SERVICES OVERSIGHT AND PLANNING COUNCIL. [REPEALED.]
- 7. DRUG SCREENING AND TESTING ACT OF 2015.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-76-101. Definitions.
- 20-76-102. Coordination of state agency service delivery.
- 20-76-103. [Repealed.]
- 20-76-104. Distribution of commodities.
- 20-76-105. [Repealed.]
- 20-76-106. Statewide implementation plan — Transitional Employment Assistance.
- 20-76-107. [Repealed.]
- 20-76-108. [Repealed.]
- 20-76-109. Use of contracts.
- 20-76-110, 20-76-111. [Repealed.]
- 20-76-112. Human Services Workers in the Schools Program.

SECTION.

- 20-76-113. Promoting outcomes for the Transitional Employment Assistance Program and the Arkansas Work Pays Program.
- 20-76-114. Department of Human Services — Authority limited.
- 20-76-115. Federal resource limits for Supplemental Nutrition Assistance Program.
- 20-76-116. Targeted incentive and instruction program for the Supplemental Nutrition Assistance Program.

A.C.R.C. Notes. Acts 1997, No. 1058, § 1, provided: “Purpose. The General Assembly recognizes that for too many families, welfare has become what it never was intended to be: a permanent way of life. This system of continuous income maintenance not only discourages all incentive for an individual to become self-sufficient, but often leads to intergenerational de-

pendency, and has built-in disincentives toward obtaining work and toward any effort to seek and secure a job. The total package of welfare benefits available to some is frequently better than the package of benefits the working poor can obtain, creating an incentive to stay on welfare. The State’s welfare system has numerous disincentives for the mainte-

nance of a stable two-parent family unit. The role and responsibilities of the father are largely ignored in the current system although the State's role should be to promote family and community responsibility for nurturing children, not to take their place. Accordingly, the General Assembly hereby declares that welfare reform is one of the major human service priorities of state government and establishes the goals of achieving a significant reduction in the number of citizens who are enrolled in such programs, transforming a "one size fits all" welfare system that fosters dependence, low self-esteem, and irresponsible behavior to one that rewards work and fosters self-reliance, responsibility, and family stability. The General Assembly intends that new approaches be designed to provide county Human Services offices with flexibility and autonomy to craft local solutions, encourage volunteer, religious, and charitable organizations to fulfill a critical role in leveraging the reduced funding available for welfare programs, create a system that is just and compassionate, hold individuals accountable for their actions, and recognize that even with assistance some recipients may be unable to attain complete self-sufficiency."

Cross References. Penalties for food stamp trafficking, § 5-55-204.

Preambles. Acts 1953, No. 110 contained a preamble which read: "Whereas Section 2 of Act 309 of 1951 did create a new type of welfare assistance grant known as Aid to the Permanently and Totally Disabled thereby necessitating that the definition of Welfare 'Assistance Grants' be amended to include this type of assistance, and

"Whereas Act 297 of 1951 did redistrict the State of Arkansas into Six Congressional Districts, and

"Whereas said redistricting did create a conflict between Act 297 of 1951 and Section 3 of Act 280 of 1939 (Ark. Stats. (1947) Section 83-103) thereby making it impossible to follow the language of Section 3 of Act 280 of 1939, and

"Whereas it has become necessary to amend Section 3 of Act 280 of 1939 (Ark. Stats. (1947) Section 83-103) to conform to Act 297 of 1951 ..."

Effective Dates. Acts 1939, No. 280, § 41: Mar. 10, 1939. Emergency clause provided: "It is hereby ascertained and

declared to be a fact that there are many needy aged, dependent children, needy blind, crippled children and other dependent persons who are suffering for the want of care, hospitalization, medical attention and other comforts of life; that Federal Funds are available, if matched by State Funds; that the unfortunate of this State can obtain the necessary relief only by the remedies set up in this act. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force and effect from and after its passage and approval."

Acts 1953, No. 110, § 3: Feb. 20, 1953. Emergency clause provided: "Whereas Section 2 of Act 309 of 1951 did create a new type of welfare assistance grant known as Aid to the Permanently and Totally Disabled thereby necessitating that the definition of Welfare 'Assistance Grants' be amended to include this type of assistance; and whereas Act 297 of 1951 did redistrict the State of Arkansas into Six Congressional Districts; and whereas said redistricting did create a conflict between Act 297 of 1951 and Section 3 of Act 280 of 1939 (Ark. Stats. (1947) Section 83-103) thereby making it impossible to follow the language of Section 3 of Act 280 of 1939; and whereas it has become necessary to amend Section 3 of Act 280 of 1939 (Ark. Stats. (1947) Section 83-103) to conform to Act 297 of 1951; and whereas it is essential to the public health, safety and interest that this conflict be remedied, an emergency is hereby declared to exist, and this act shall be in effect from and after its approval."

Acts 1987, No. 184, § 20: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987.”

Acts 1993, No. 1239, § 125: July 1, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, Section 119 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1993.”

Acts 1997, No. 1058, § 33: July 1, 1997. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the United States Congress has amended the laws pertaining to certain federally funded public assistance programs; that these programs are crucial to the life and health of many needy citizens of the State of Arkansas who otherwise will be unable to obtain food, clothing, shelter, or medical care; that federal law mandates participating states to implement new public assistance programs on or before July 1, 1997, or forfeit federal funding necessary for such programs; that this act so provides. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect on July 1, 1997.”

Acts 1999, No. 1567, § 28: July 1, 1999. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the United States Congress has amended the laws pertaining to certain federally funded public assistance programs; that these

programs are crucial to the life and health of many needy citizens of the State of Arkansas who otherwise will be unable to obtain food, clothing, shelter, or medical care; that federal funds have already been appropriated for this program and any delays could work irreparable harm upon the proper administration of essential governmental programs and the State of Arkansas may risk forfeiture of the federal funding; that this act so provides. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect on July 1, 1999.”

Acts 2005, No. 1705, § 20: Effective date clause provided:

“(a) Section 10 of this act shall become effective immediately upon enactment.

“(b) Sections 3, 6, 7, 9, 11, 12 and 14 through 18 shall become effective upon certification from the Directors of the Employment Security Department and the Department of Human Services with consent from the Governor and the Chair of the Senate Committee on Public Health, Welfare and Labor and the Chair of the House Committee on Public Health, Welfare and Labor.

“(c)(1) Section 19 shall become effective on January 1, 2006.

“(2) Within Section 19 of this act:

“(A) The effective date for the Arkansas Work Pays Program, Arkansas Code § 20-76-444, may be delayed up to July 1, 2006 if the Transitional Employment Board certifies to the Governor that the transfer of Transitional Employment Assistance Program will not take place until January 1, 2006 or later and that it is in the public interest that the effective date of Work Pays be delayed.

“(B) Arkansas Code § 20-76-445 shall become effective July 1, 2005.

“(C) Arkansas Code § 20-76-446 shall become effective on January 1, 2006.”

Acts 2005, No. 1705, § 21: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that due to increasing requirements in the Transitional Employment Assistance Program amendments made in sections 4, 5, 8, 12, and 13 of this act are necessary for continued effectiveness of the program and provision of services to families. Therefore, an emergency is declared to exist and this act

being necessary for the preservation of the public peace, health, and safety, section 10 will be in full force and effect immediately and sections 4, 5, 8, and 13 shall be in full force and effect on and after July 1, 2005.”

Acts 2005, No. 1705 was signed by the Governor on April 5, 2005.

Acts 2007, No. 514, § 25: Mar. 27, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the state fiscal year begins July 1, 2007; that the state agencies responsible for the programs under this act require time to prepare for the program changes created in this act; that families in need of temporary assistance may not receive the needed assistance if this act does not become effective immediately; and that any delay in the effective date of this act could work irreparable harm on families in need of temporary assistance. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 1050, § 2: Apr. 15, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is a need for a human services workers program in schools and that this act is immediately necessary because most schools lack the expertise to provide appropriate services to students and because there is a need to inform schools about the availability of the program prior to the end of the current school year to have the opportunity to recruit a sufficient number of human services workers for the next school year. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on April 15, 2007.”

Acts 2011, No. 1228, § 2: Apr. 15, 2011. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that there is a need for a human services workers program in schools and that this act is imme-

diately necessary because most schools lack the expertise to provide appropriate services to students and because there is a need to inform schools about the availability of the program prior to the end of the current school year to have the opportunity to recruit a sufficient number of human services workers for the next school year. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on April 15, 2011.”

Acts 2015, No. 907, § 15: July 1, 2015. Emergency clause provided:

“(a) It is found and determined by the General Assembly of the State of Arkansas that federal law requires the implementation of state-level workforce development acts to authorize federal funding for workforce development programs; that the Arkansas Workforce Development Board must begin work immediately to prepare for the inauguration of local workforce development boards; that the first phase of work by the Arkansas Workforce Development Board must be completed to coincide with the beginning of the 2015-2016 fiscal year on July 1, 2015. Therefore, an emergency is declared to exist, and § 15-4-37-3704 [15-4-3704] being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

“(1) The date of its approval by the Governor;

“(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

“(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

“(b) It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this act on July 1, 2015, is essential to the inauguration of the programs for which this act is provided, and that in the event of an extension of the legislative session, the delay in the effective date of this act beyond July 1, 2015, could work irreparable harm upon the proper administration and provision of essential programs created in the act. Therefore, an emergency is hereby declared to exist and,

except for § 15-4-3704, this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2015.”

Acts 2017, No. 897, § 21: July 1, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that it would be prudent to abolish the State Child Abuse and Neglect Prevention Board and transfer the powers and duties of the State

Child Abuse and Neglect Prevention Board to the Department of Human Services; that this act facilitates the timely transfer of the State Child Abuse and Neglect Prevention Board to the Department of Human Services; and that this act is necessary for alignment with the fiscal year. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2017.”

20-76-101. Definitions.

As used in this chapter:

(1) “Assessment services” means an evaluation to determine the abilities, talents, proficiencies, and deficiencies of applicants and recipients with regard to the ability of the individual to move into employment;

(2) “Date of enrollment” means the date that an applicant is approved as eligible for the Transitional Employment Assistance Program;

(3) “Diversion from assistance” means a one-time loan of money or the furnishing of nonmonetary assistance to an applicant who is eligible for but does not require enrollment in the Transitional Employment Assistance Program;

(4) “Education or training” means basic remedial education, adult education, high school education, education to obtain the equivalent of a high school diploma, education to learn English as a second language, applied technology training, and postsecondary education and training;

(5) “Employment assistance” means financial assistance, child care, assistance to secure full-time employment, assistance in obtaining education and training that leads to full-time employment, case management services, and other services designed to assist recipients in achieving self-sufficiency through employment;

(6) “Extended support services” means assistance to a recipient who has obtained employment under the Transitional Employment Assistance Program, which may include, but is not limited to, child care and medical assistance;

(7) “Full-time education or training” means education or training on a full-time basis as defined by the Department of Human Services;

(8) “Medical assistance” means assistance furnished pursuant to Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 — 1396w-5, commonly referred to as Medicaid, or a state-funded medical assistance program;

(9) “Personal responsibility agreement” means an agreement between the department and the recipient specifying the recipient’s responsibilities that are a condition of receiving employment assis-

tance, which may include an employment plan that describes what the recipient and the department will do to assist the recipient in achieving self-sufficiency through employment;

(10) "Positive reinforcement outcome bonus" means a one-time cash assistance bonus for achieving an employment plan goal;

(11) "Relocation assistance" means assistance to an eligible recipient who lives in an area of limited job opportunities to enable the recipient to relocate for purposes of full-time employment that the recipient has secured;

(12) "Support services" means child care, transportation, financial assistance, medical assistance, substance abuse treatment, life skills training, parenting skills training, and other similar assistance;

(13) "Temporary Assistance for Needy Families Program" means all Arkansas programs funded by federal Temporary Assistance to Needy Families block grant funds or state funds claimed as maintenance of effort under the federal Temporary Assistance for Needy Families program, including:

(A) The Transitional Employment Assistance Program;

(B) The Arkansas Work Pays Program;

(C) The Career Pathways Initiative; and

(D) The Community Investment Initiative; and

(14) "Unearned income" means all income that a recipient receives from sources other than employment, including child support payments, supplemental security income, supplemental security disability income, workers' compensation, and unemployment insurance.

History. Acts 1939, No. 280, § 1; 1953, No. 110, § 1; A.S.A. 1947, § 83-101; Acts 1997, No. 1058, § 2; 1999, No. 1567, § 3; 2007, No. 514, § 1; 2015, No. 907, § 6.

Amendments. The 2015 amendment deleted (2), (4), and (15) and redesignated the remaining subdivisions accordingly;

substituted "Transitional Employment Assistance Program" for "program" in present (6); substituted "Department of Human Services" for "department" in present (7); and added "42 U.S.C. §§ 1396 — 1396w-5" in present (8).

CASE NOTES

Cited: Norton v. Blaylock, 285 F. Supp. 659 (W.D. Ark. 1973).

20-76-102. Coordination of state agency service delivery.

(a) To ensure that all available state government resources are used to help transitional employment assistance recipients make the transition from welfare to work, each of the following state agencies and organizations shall also be required to work with the Department of Workforce Services in providing transitional employment assistance services:

(1) The Department of Human Services;

(2) The Department of Higher Education, including community colleges and the University of Arkansas Cooperative Extension Service;

(3) The Department of Education;

- (4) The Arkansas Development Finance Authority;
- (5) The Arkansas Economic Development Council;
- (6) The Arkansas Department of Transportation;
- (7) The Department of Finance and Administration, including the Office of Child Support Enforcement;
- (8) The Adult Learning Alliance, Inc.;
- (9) The Department of Career Education; and
- (10) Other state agencies as directed by the Governor or as directed by the General Assembly.

(b) State agencies required under subsection (a) of this section to work with the Department of Workforce Services in providing transitional employment assistance services to recipients shall make every effort to use financial resources in their respective budgets and to seek additional funding sources, whether private or federal, to supplement the moneys allocated by the Department of Workforce Services for the Transitional Employment Assistance Program.

(c) All agencies of the state and local governments providing program services shall work cooperatively with and provide any necessary assistance to the General Assembly and the Arkansas Workforce Development Board and shall furnish, in a timely manner, complete and accurate information regarding the program to legislative committees and the Arkansas Workforce Development Board upon request.

History. Acts 1987, No. 184, §§ 14, 15; 1997, No. 1058, § 3; 1999, No. 1567, §§ 4, 5; 2005, No. 1705, § 3; 2007, No. 514, § 1; 2015, No. 907, § 7; 2017, No. 707, § 64; 2017, No. 897, § 14.

A.C.R.C. Notes. Former § 20-76-102, which concerned the Employment Security Division (now Department of Workforce Services) and service to food stamp applicants, is deemed to be superseded by this section. The former section was derived from Acts 1985, No. 311, §§ 12, 13.

Amendments. The 2015 amendment substituted “Arkansas Workforce Development Board” for “Temporary Assistance for Needy Families Oversight Board” and “Arkansas Workforce Development Board” for “board” in (c).

The 2017 amendment by No. 707 substituted “Department of Transportation” for “State Highway and Transportation Department” in (a)(6).

The 2017 amendment by No. 897 repealed former (a)(8).

20-76-103. [Repealed.]

Publisher’s Notes. This section, concerning use of subpoenas in hearings on benefit determinations, was repealed by

Acts 2011, No. 1139, § 4. The section was derived from Acts 1987, No. 727, §§ 1-5; 1993, No. 273, § 1.

20-76-104. Distribution of commodities.

The Department of Human Services shall neither seek reimbursement nor charge any fees for distributing commodities furnished to the state by the United States Government.

History. Acts 1993, No. 1239, § 70.

20-76-105. [Repealed.]

Publisher's Notes. This section, concerning the Temporary Assistance for Needy Families Oversight Board, was repealed by Acts 2015, No. 907, § 8. The section was derived from Acts 1997, No.

1058, § 4; 1999, No. 1567, § 6; 2001, No. 1264, §§ 1-3; 2003, No. 1306, §§ 1-3; 2005, No. 1705, §§ 4-6; 2007, No. 514, § 2; 2009, No. 952, § 11; 2013, No. 1132, § 41.

20-76-106. Statewide implementation plan — Transitional Employment Assistance.

(a) The Department of Workforce Services shall:

(1) Develop a statewide implementation plan for ensuring the cooperation of state agencies and local agencies and encouraging the cooperation of private entities, especially those receiving state funds, in the coordination and implementation of the Transitional Employment Assistance Program, the Arkansas Work Pays Program, and achievement of the goals; and

(2)(A) Ensure that program recipients throughout the state, including those in rural areas, have comparable access to transitional employment assistance benefits.

(B) The statewide implementation plan shall be subject to the review and recommendation of the Arkansas Workforce Development Board.

(b) At a minimum, the transitional employment assistance implementation plan shall include:

(1) Performance standards and measurement criteria for state and county offices of the Department of Human Services, the Department of Workforce Services, and all service providers under the program;

(2) Contract guidelines for contract service providers under the program;

(3) Guidelines for training transitional employment assistance service providers, whether state employees or contract providers;

(4) Functions to be performed by each state agency in helping recipients make the transition from welfare to work;

(5) Guidelines for clarifying or, if necessary, modifying the rules of the state agencies charged with implementing the program so that all unnecessary duplication is eliminated;

(6) Guidelines for modifying compensation and incentive programs for state employees in order to achieve the performance outcomes necessary for successful implementation of the program;

(7) Guidelines for timely assessments for each participant which lead to an individual personal responsibility agreement that identifies the strengths of the participant and the barriers faced in obtaining a job and reaching self-sufficiency and the services to be provided to assist the participant in finding and keeping work and in moving toward self-sufficiency;

(8) Guidelines for timely provision of needed support services as specified in the individual personal responsibility agreement. These

guidelines shall include procedures for evaluating the quality and value of assessments and the provision of support services;

(9) Guidelines governing job search requirements for transitional employment assistance applicants;

(10) Guidelines governing the provision of support services to transitional employment assistance participants and former transitional employment assistance participants to assist them in retaining employment and earning higher wages and career advancement;

(11) Guidelines governing the combining of work with education and training;

(12) Guidelines for the independent evaluation of all cases closed due to sanctions or time limits;

(13) A micro-lending program and an individual development trust account demonstration project for program recipients;

(14) Criteria for relocation of program recipients which take into account factors, including, but not limited to, job availability, availability of support services, and proximity of relocation area to current residence;

(15) Criteria for prioritizing work activities of program recipients in the event that funds are projected to be insufficient to support full-time work activities of program recipients. The criteria may include, but not be limited to, priorities based on the following:

(A) At least one (1) adult in each two-parent family shall be assigned priority for full-time work activities;

(B) Among single-parent families, a family that has older pre-school children or school-age children shall be assigned priority for work activities;

(C) A recipient who has access to nonsubsidized child care may be assigned priority for work activities; and

(D) Priority may be assigned based on the amount of time remaining until the recipient reaches the applicable time limit for program participation or may be based on requirements of a personal responsibility agreement; and

(16) The development of a performance-based payment structure to be used for all program services which takes into account the degree of difficulty associated with placing a program recipient in a job, the quality of placement with regard to salary, benefits, and opportunities for advancement, and the recipient's retention of the placement. The payment structure should provide, if appropriate, bonus payments to providers that experience notable success in achieving long-term job retention with program recipients.

(c)(1)(A) The Department of Workforce Services shall prepare a comprehensive annual program report.

(B) The report shall be subject to review and recommendation by the board.

(2) The Department of Workforce Services shall submit the comprehensive annual program report to the Governor, the House Committee on Public Health, Welfare, and Labor, and the Senate Committee on Public Health, Welfare, and Labor.

(3) The comprehensive annual program report shall contain proposals for measuring and making progress toward the transitional employment assistance outcomes during the succeeding three-year period.

(4) The comprehensive annual program report to the Governor, the House Committee on Public Health, Welfare, and Labor, and the Senate Committee on Public Health, Welfare, and Labor shall include all information that the board deems necessary for determining progress in achieving the outcomes.

(5) Information shall be provided for the state, each employment opportunity district, and each county.

(6) The report shall also include all information requested by resolution of the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

(7) This report shall include a copy of all federal monthly, quarterly, and annual reports submitted by the Department of Human Services regarding the Temporary Assistance for Needy Families Program.

(d) The House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor shall report annually to the General Assembly their findings and recommendations regarding the program.

History. Acts 1997, No. 1058, § 4; 1999, No. 1567, § 7; 2001, No. 1264, § 4; 2005, No. 1705, § 7; 2007, No. 514, §§ 3, 4; 2009, No. 415, § 1; 2011, No. 817, § 1; 2015, No. 907, § 9.

Amendments. The 2015 amendment substituted “Arkansas Workforce Development Board” for “Temporary Assistance for Needy Families Oversight Board” in (a)(2)(B).

20-76-107. [Repealed.]

A.C.R.C. Notes. Pursuant to Acts 2009, No. 952, § 20, the amendment of § 20-76-107(a)(3)(A) by Acts 2009, No. 952, § 12, is superseded by the repeal of § 20-76-107 by Acts 2009, No. 150, § 1.

Publisher’s Notes. This section, con-

cerning the independent evaluator, was repealed by Acts 2009, No. 150, § 1. The section was derived from Acts 1997, No. 1058, § 4; 1999, No. 1567, § 8; 2001, No. 1264, § 5; 2003, No. 1306, § 4; 2007, No. 514, § 5.

20-76-108. [Repealed.]

Publisher’s Notes. This section, concerning local transitional employment assistance coalitions, was repealed by Acts

2005, No. 1705, § 8. The section was derived from Acts 1997, No. 1058, § 4; 1999, No. 1567, § 9.

20-76-109. Use of contracts.

The Department of Workforce Services, as appropriate, should provide work activities, training, and other services through contracts. In contracting for work activities, training, or services, the following apply:

(1)(A) A contract shall be performance-based.

(B) Whenever possible, payment shall be tied to performance outcomes that include factors such as, but not limited to, job entry, job

entry at a target wage, and job retention, rather than tied to completion of training or education or any other phase of the program participation process;

(2)(A) A contract may include performance-based incentive payments that may vary according to the extent to which the recipient is more difficult to place.

(B)(i) Contract payments may be weighted proportionally to reflect the extent to which the recipient has limitations associated with the long-term receipt of welfare and difficulty in sustaining employment.

(ii) The factors may include the extent of the recipient's prior receipt of welfare, lack of employment experience, lack of education, lack of job skills, and other factors determined appropriate by the department;

(3) Each contract awarded under the Transitional Employment Assistance Program shall be awarded in accordance with state procurement and contract laws; and

(4)(A) The department may contract with commercial, charitable, or faith-based organizations.

(B) A contract must comply with federal requirements with respect to nondiscrimination and other requirements that safeguard the rights of participants.

(C) Services may be provided under contract, certificate, voucher, or other form of disbursement.

History. Acts 1997, No. 1058, § 4; 2005, No. 1705, § 9.

20-76-110, 20-76-111. [Repealed.]

Publisher's Notes. These sections concerning the Arkansas Transitional Employment Assistance Transition Workgroup and transfers of powers, duties, and personnel, were repealed by Acts 2007,

No. 514, § 6. The sections were derived from the following sources:

20-76-110. Acts 2005, No. 1705, §10.

20-76-111. Acts 2005, No. 1705, §10.

20-76-112. Human Services Workers in the Schools Program.

(a) The Human Services Workers in the Schools Program is established as a collaborative effort among the Division of Children and Family Services of the Department of Human Services, the Arkansas Workforce Development Board, the Department of Education, and local school districts. The Human Services Workers in the Schools Program is designed to help children and families by:

(1) Promoting safety of children and strengthening of families;

(2) Supporting the community's capacity to produce children who are healthy, children who are in supportive, nurturing, and healthy families, and children who succeed in school; and

(3) Promoting the division's family preservation philosophy and family-centered practice.

(b) Upon approval of the board, the division shall enter into contracts with local school districts to provide funding for the maximum number of human services workers.

(c) A human services worker shall have a bachelor's degree or a master's degree in social work or a related field and shall provide the following services according to skills and training:

- (1) Crisis intervention;
- (2) School conferences and in-service training;
- (3) Home visits;
- (4) Transportation for family and student group counseling;
- (5) Parent training and activities;
- (6) Supportive service referrals;
- (7) Individualized coping and conflict management skills; and
- (8) Assessment of family and student needs.

(d)(1) Funding for human services workers shall be targeted to schools with eighty percent (80%) or more of their children eligible for the Free and Reduced Lunch Program under the National School Lunch Act, 42 U.S.C. § 1751 et seq.

(2) The Department of Education and the division shall develop criteria to prioritize eligibility for the Human Services Workers in the Schools Program.

(e) The Coordinated Health Services Section of the Department of Education shall evaluate the Human Services Workers in the Schools Program annually in coordination with the division, the board, and the local school districts that hold contracts.

(f) A parent or a student has the option to refuse any services recommended under the Human Services Workers in the Schools Program.

History. Acts 2005, No. 2295, § 1; 2007, No. 1050, § 1; 2009, No. 952, § 13; 2011, No. 1228, § 1.

A.C.R.C. Notes. Acts 2009, No. 952, § 13, omitted without striking through previously existing language in amending § 20-76-112(a). A.C.R.C. staff has determined that the omitted language was in-

tended to be repealed and § 20-76-112(a) is set out above to reflect that intent.

The Temporary Assistance for Needy Families Oversight Board was abolished via repeal in Acts 2015, No. 907, § 8, and replaced by the Arkansas Workforce Development Board by Act 907.

20-76-113. Promoting outcomes for the Transitional Employment Assistance Program and the Arkansas Work Pays Program.

(a) The administration of the Transitional Employment Assistance Program and the Arkansas Work Pays Program shall focus on promoting the following Transitional Employment Assistance Program outcomes for Transitional Employment Assistance Program recipients and poor families in Arkansas:

(1) Increase the percentage of families who receive appropriate services to move off of Transitional Employment Assistance Program cash assistance into employment and toward self-sufficiency;

(2) Increase the percentage of families who leave Transitional Employment Assistance Program cash assistance due to earnings from work;

(3) Increase earnings of families who leave Transitional Employment Assistance Program cash assistance;

(4) Increase the percentage of parents leaving Transitional Employment Assistance Program cash assistance who stay employed; and

(5) Increase the percentage of former Transitional Employment Assistance Program cash assistance recipients who move out of poverty, including the value of food stamps and the federal Earned Income Tax Credit and child support.

(b) The Department of Workforce Services shall develop and maintain the indicators for the Transitional Employment Assistance Program outcomes listed in subdivisions (a)(1)-(5) of this section, subject to review and approval by the Arkansas Workforce Development Board.

(c)(1) The Department of Workforce Services shall develop proper targets for each Transitional Employment Assistance Program outcome by July 1 of each year, subject to review and approval by the board.

(2) The Department of Workforce Services shall review and report on progress in achieving the targets in the comprehensive annual program report.

(3)(A) On the forty-fifth day after the end of the federal fiscal year, the report shall be submitted to the Governor and to the Chair of the House Committee on Public Health, Welfare, and Labor and the Chair of the Senate Committee on Public Health, Welfare, and Labor.

(B) The report shall include comments from the Department of Human Services, the Department of Workforce Services, and other relevant state agencies about their activities and their progress toward the Transitional Employment Assistance Program outcome targets.

History. Acts 2007, No. 514, § 7; 2011, No. 817, § 2; 2013, No. 1132, § 42; 2015, No. 907, § 10.

Amendments. The 2013 amendment deleted “Interim” following “Senate” and “House” in (c)(3)(A).

The 2015 amendment substituted “Arkansas Workforce Development Board” for “Temporary Assistance for Needy Families Oversight Board” in (b).

20-76-114. Department of Human Services — Authority limited.

The Department of Human Services shall not seek, apply for, accept, or renew any waiver or demonstration project under 7 U.S.C. § 2015(o) that relaxes or reduces the codified Supplemental Nutrition Assistance Program requirement to work.

History. Acts 2017, No. 518, § 1.

20-76-115. Federal resource limits for Supplemental Nutrition Assistance Program.

(a) Unless required by federal law:

(1) The resource limit standards of the Supplemental Nutrition Assistance Program shall not exceed the standards specified in 7 U.S.C. § 2014(g)(1); and

(2) Categorical eligibility that exempts households from the federal resource limit standards shall not be granted for any noncash, in-kind, or other benefit.

(b) Unless required by federal law, the Department of Human Services shall not:

(1) Apply gross income standards for food assistance higher than the standards specified in 7 U.S.C. § 2014(c); or

(2) Grant categorical eligibility that exempts households from the gross income standard under subdivision (b)(1) of this section for any noncash, in-kind, or other benefit.

History. Acts 2017, No. 1095, § 1.

20-76-116. Targeted incentive and instruction program for the Supplemental Nutrition Assistance Program.

(a) To the extent possible, the Department of Human Services shall:

(1) Support and participate in viable programs such as the Double Up Food Bucks Incentive Program along with Healthy Active Arkansas partners that offer incentives for healthy food purchases by recipients of Supplemental Nutrition Assistance Program benefits; and

(2) Authorize targeted nutrition education programming at locations operated by Healthy Active Arkansas partners that are authorized in the targeted nutrition education programming plan of operations.

(b) To increase the success of the targeted nutrition education program, the department shall authorize nutrition education programs that are made available through private grants to be offered in targeted areas.

(c) The department may authorize:

(1) The Arkansas Hunger Relief Alliance in cooperation with the Arkansas Coalition for Obesity Prevention as part of the Governor's Healthy Active Arkansas framework to offer targeted nutrition education programs; and

(2) Other entities providing private funds in cooperation with the department and the Arkansas Coalition for Obesity Prevention as part of the Healthy Active Arkansas framework to offer targeted nutrition education programs.

History. Acts 2017, No. 1101, § 1.

SUBCHAPTER 2 — ADMINISTRATION GENERALLY

SECTION.

- 20-76-201. Department of Human Services — Powers and duties.
- 20-76-202. Department of Human Services — Public assistance — Temporary funding.
- 20-76-203. [Repealed.]
- 20-76-204. County offices — Powers and duties.
- 20-76-205. [Repealed.]
- 20-76-206. [Repealed.]
- 20-76-207. Political activity.
- 20-76-208. Legislative finding — Regional offices.
- 20-76-209. Payment of certain contributions and withholdings by Department of Human Services generally.
- 20-76-210. Payment of certain contributions and withholdings —

SECTION.

- Certain nursing home care projects.
- 20-76-211. Director's office of Department of Human Services — Client Specific Emergency Services Revolving Fund Paying Account.
- 20-76-212. Reimbursement rate to providers — Arkansas Medicaid Program.
- 20-76-213. Electronic benefit transfer system for food stamps.
- 20-76-214. Payment of certain contributions and withholdings — Transitional employment assistance.
- 20-76-215. [Deleted.]

Publisher's Notes. Acts 1939, No. 280, § 2, created a State Department of Public Welfare which consisted of a State Board of Public Welfare, a Commissioner of Public Welfare, and such other officials and employees as were authorized. Acts 1971, No. 38, § 12, transferred the State Department of Public Welfare and its functions, powers, and duties, by a type 2 transfer, to the Department of Social and Rehabilitative Services. Acts 1977, No. 383, § 2, changed the name of the Arkansas Department of Social and Rehabilitative Services to the Department of Human Services.

Effective Dates. Acts 1939, No. 280, § 41: Mar. 10, 1939. Emergency clause provided: "It is hereby ascertained and declared to be a fact that there are many needy aged, dependent children, needy blind, crippled children and other dependent persons who are suffering for the want of care, hospitalization, medical attention and other comforts of life; that Federal Funds are available, if matched by State Funds; that the unfortunate of this State can obtain the necessary relief only by the remedies set up in this act. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect

and be in force and effect from and after its passage and approval."

Acts 1941, No. 274, § 8: Mar. 26, 1941. Emergency clause provided: "It is found by the General Assembly that the Social Security Board or other federal agencies cooperating with the State of Arkansas in aiding and assisting the aged, the blind, crippled children, etc., require a merit system or civil service plan for the employees of the Welfare Department who are paid in whole or in part with federal funds; that the Social Security Act requires that such records of said Department as concern assistance matters be held and treated as confidential; that the preservation of the public peace, health and safety require this act to go into effect without delay; an emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1981, No. 934, § 43: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of

the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1985, No. 649, § 46: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1985, No. 772, § 19: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1989, No. 44 (1st Ex. Sess.), § 18: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the

Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1992 (2nd Ex. Sess.), No. 3, § 8: Dec. 18, 1992. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly meeting in extraordinary session, that the State of Arkansas must provide adequate health care to its indigent citizens, that if immediate measures are not taken, many Arkansans will be irreversibly emotionally and physically damaged by the removal of health care measures as provided under provisions of title XIX of the Social Security Act, for the state Medicaid Program and that it is in the interests of the people of the State of Arkansas to provide for these measures. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1993, No. 134, § 6: July 1, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly that the system used in Arkansas to administer the federal food stamp program has become cost-prohibitive, is subject to abuse, and is an ever-increasing burden on the state; that an electronic benefit transfer system, for which the federal government will pay fifty percent (50%) of the costs, is currently being used in several other states and has resulted in considerable savings; that the effectiveness of this Act on July 1, 1993, is essential for an electronic benefit transfer program to be in place as soon as possible; that in the event of an extension of the Regular Session, the delay in the

effective date of this Act beyond July 1, 1993, could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after July 1, 1993."

Acts 1995, No. 1198, § 110: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety; Section 99 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1995."

Acts 1997, No. 1360, § 132: July 1, 1997. Emergency clause provided: "It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the

public peace, health and safety, Section 115 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1997."

Acts 1999, No. 1567, § 28: July 1, 1999. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the United States Congress has amended the laws pertaining to certain federally funded public assistance programs; that these programs are crucial to the life and health of many needy citizens of the State of Arkansas who otherwise will be unable to obtain food, clothing, shelter, or medical care; that federal funds have already been appropriated for this program and any delays could work irreparable harm upon the proper administration of essential governmental programs and the State of Arkansas may risk forfeiture of the federal funding; that this act so provides. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect on July 1, 1999."

Acts 2007, No. 514, § 25: Mar. 27, 2007. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the state fiscal year begins July 1, 2007; that the state agencies responsible for the programs under this act require time to prepare for the program changes created in this act; that families in need of temporary assistance may not receive the needed assistance if this act does not become effective immediately; and that any delay in the effective date of this act could work irreparable harm on families in need of temporary assistance. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

RESEARCH REFERENCES

Am. Jur. 79 Am. Jur. 2d, Welfare Laws, § 1 et seq. **C.J.S.** 81 C.J.S., Soc. Sec., § 1 et seq.

20-76-201. Department of Human Services — Powers and duties.

The Department of Human Services shall:

(1) Administer assigned forms of public assistance, supervise agencies and institutions caring for dependent or aged adults or adults with mental or physical disabilities, and administer other welfare activities or services that may be vested in it;

(2) Administer or supervise all child welfare activities in accordance with the rules and regulations of the department, including:

(A) The licensing and supervision of private and public childcare agencies and institutions;

(B) The care of dependent, neglected, and delinquent children and children with mental or physical disabilities in foster family homes or in institutions; and

(C) The care and supervision of children placed for adoption;

(3) Enter into reciprocal agreements with public welfare agencies in other states relative to the provisions of relief and assistance to transients and nonresidents and cooperate with other state departments and with the United States Government in studying labor, health, and public assistance problems involved in transiency;

(4) Administer and make effective the rules and regulations governing personnel administration, including the preparation and administration of classification and compensation plans and the method of selection for positions in the department:

(A) Develop performance standards and bonus awards for all positions in the program focused on achieving the outcomes; and

(B) Remove or transfer employees from the program to other responsibilities within the department if they do not meet performance standards;

(5) Carry on research and compile statistics relative to public welfare programs throughout the state, including all phases of dependency, defectiveness, delinquency, and related problems and develop plans in cooperation with other public and private agencies for the prevention as well as the treatment of conditions giving rise to public welfare problems;

(6) Assist other departments, agencies, and institutions of the state and federal governments, when so requested, by performing services in conformity with the purposes of this chapter;

(7) Cooperate with the United States Government in matters of mutual concern pertaining to federally funded programs within the department's purview;

- (8) Make reports in the form and containing the information as the United States Government from time to time may require and comply with provisions as the United States Government from time to time may find necessary to assure the correctness and veracity of the reports;
- (9) Allocate funds for the purposes and in accordance with the provisions of this chapter and rules and regulations as may be prescribed by the department and subject to review and recommendation by the Arkansas Workforce Development Board;
- (10) Establish standards of eligibility for assistance developed by the department and subject to review and recommendation by the board;
- (11) Receive, administer, disburse, dispose, and account for funds, commodities, equipment, supplies, and any kind of property given, granted, loaned, or advanced to the State of Arkansas for public assistance, public welfare, Social Security, or any other similar purposes;
- (12) Make rules and regulations and take actions as are necessary or desirable to carry out the provisions of this chapter and that are not inconsistent therewith;
- (13) Solicit participation of private organizations, nonprofit organizations, charitable organizations, and institutions of education in the delivery of services and in the enactment and revision of rules and regulations;
- (14) Employ attorneys to represent the interests of the department; and
- (15) Develop and implement automated statewide benefit delivery and information systems to achieve the purposes of this chapter.

History. Acts 1939, No. 280, § 7; A.S.A. 1947, § 83-109; Acts 1995, No. 710, § 6; 1997, No. 1058, § 5; 1999, No. 1567, § 10; 2001, No. 1264, § 6; 2007, No. 514, § 8.

A.C.R.C. Notes. Pursuant to § 1-2-124, the phrase “dependent or mentally or physically disabled or aged adults” in § 20-76-201(1) has been changed to “dependent or aged adults or adults with mental or physical disabilities”.

The Temporary Assistance for Needy Families Oversight Board was abolished via repeal in Acts 2015, No. 907, § 8, and replaced by the Arkansas Workforce Development Board by Act 907.

Cross References. Department of Human Services authorized to issue rules to assure compliance with federal statutes, rules, and regulations, § 25-10-129.

RESEARCH REFERENCES

Ark. L. Rev. An Accident Waiting to Happen: Arkansas Department of Health and Human Services v. Ahlborn Exposes

Inequities in Medical Benefits Legislation, 60 Ark. L. Rev. 533.

20-76-202. Department of Human Services — Public assistance — Temporary funding.

(a)(1) It is found and determined that the continued operations of the Department of Human Services, through its appropriate divisions, in accordance with the approved annual operations plan, are from time to time seriously impaired by either administrative oversights and delays

by the Office of Grants Management of the United States Department of Health and Human Services or by the processes of federal fiscal year conversion.

(2) It is further found and determined that the delays in the proper preparation and transmittal of federal grant award authorizations and letter of credit instruments have created unnecessary hardships on the providers of services and the needy citizens of this state.

(b)(1) Therefore, upon certification of the pending availability of federal funding by the disbursing officer of the appropriate division of the Department of Human Services, the Chief Fiscal Officer of the State may grant temporary advances.

(2) The Chief Fiscal Officer of the State shall recover within a period of twenty (20) days the temporary advances upon receipt of the grant award authorizations or letter of credit instruments.

(c) No person in the State of Arkansas shall be excluded from participation in or be subjected to discrimination under any program or activity enumerated in this section on the ground of race, color, sex, disability, religion, or national origin.

History. Acts 1981, No. 934, §§ 31, 36; A.S.A. 1947, §§ 83-109.1, 83-124.2; Acts 1997, No. 1058, § 6.

20-76-203. [Repealed.]

Publisher's Notes. This section, concerning public assistance and legal assistants for the Department of Human Services, was repealed by Acts 1997, No.

1058, § 31. The section was derived from Acts 1965, No. 572, §§ 1-4, 6; 1969, No. 371, §§ 1-3; A.S.A. 1947, §§ 83-108.1 — 83-108.4, 83-108.6.

20-76-204. County offices — Powers and duties.

(a) The appropriate division of the Department of Human Services shall have authority to receive, disburse, and account for funds from the division, county, state, or any other source for purposes and plans approved by the division in accordance with the rules and regulations established by the division.

(b) The appropriate division is empowered to receive and disburse funds received from the department for general relief purposes. The funds shall be spent and accounted for by the county offices in accordance with the rules, regulations, and policies of the department pertaining to the granting of assistance and relief.

(c) The appropriate division is authorized to establish a county welfare fund from which fund the county offices are authorized to make such disbursements and expenditures for general relief as may be necessary to carry out the purposes of this act and in accordance with the rules and regulations of the Department of Human Services.

History. Acts 1939, No. 280, § 13; A.S.A. 1947, § 83-116.

20-76-205. [Repealed.]

Publisher's Notes. Former § 20-76-205, concerning merit systems, was repealed by Acts 1987, No. 906, § 1. The section was derived from Acts 1941, No. 274, § 2; A.S.A. 1947, § 83-121.

This section, concerning use of unspent federal assistance, was repealed by Acts 2007, No. 514, § 9. The section was derived from Acts 2001, No. 1264, § 11.

20-76-206. [Repealed.]

Publisher's Notes. This section, concerning merit systems, was repealed by Acts 1987, No. 906, § 1. The section was

derived from Acts 1939, No. 280, § 36; A.S.A. 1947, § 83-122.

20-76-207. Political activity.

(a)(1) No officer or employee of the appropriate division of the Department of Human Services or of a county office shall use his or her official authority to influence or permit the use of the program administered by the division or the county offices for the purpose of interfering with an election or affecting the results thereof or for any political purpose.

(2) No officer or employee shall devote his or her office hours, or efforts during office hours, towards any partisan political activity, nor shall any activity be conducted upon the premises of the employee or officer's agency, commission, or board.

(3) Furthermore, no communication, vehicles, stationery, or other material property of the State of Arkansas shall be utilized for any partisan political activities by the officers or employees.

(4) No officer or employee shall conduct himself or herself in such a manner during allowable political activity so as to reflect that his or her position is that of the State of Arkansas, or his or her agency, commission, or board.

(b)(1) Except as noted otherwise in this section or as necessary to meet the requirements of federal law as pertains to employees, no restrictions shall be imposed upon the political freedoms of an officer or employee.

(2) No officer or employee shall be deprived either of his or her right to vote or expression of opinion as a citizen on political subjects.

(c)(1) No officer or employee shall solicit or receive directly or indirectly any political funds or contributions from other officers or employees of that agency; nor shall any officer or employee be obliged to contribute or render services, assistance, subscriptions, assessments, or contributions for any political purposes.

(2) However, during nonduty hours and away from state premises, an officer or employee may communicate through the mails requests for political support from the public at large which may include officers and employees of the agency.

(d) Any officer or employee of the division or of a county office violating this provision shall be subject to discharge or suspension or

such other disciplinary measures as may be provided by the rules and regulations of the division.

History. Acts 1939, No. 280, § 16; 1941, No. 274, § 5; 1979, No. 568, § 1; A.S.A. 1947, § 83-119.

Cross References. Political activity of public employees permitted, § 21-1-207.

20-76-208. Legislative finding — Regional offices.

(a) It is hereby found and determined by the Seventy-Seventh General Assembly that regional offices tend to create inefficiency in the operation of the programs and services provided by the Department of Human Services.

(b) Therefore, no office of the Department of Human Services shall be called a regional office, nor shall any function of any office, other than the Department of Human Services Central Office, include supervision of any district department office.

History. Acts 1989 (1st Ex. Sess.), No. 44, § 11.

A.C.R.C. Notes. Former § 20-76-208, concerning regional Department of Human Services offices, is deemed to be superseded by this section. The former sec-

tion was derived from Acts 1987, No. 921, § 14. A similar provision, which was also codified as § 20-76-208 and was previously superseded, was derived from Acts 1985, No. 649, § 31; A.S.A. 1947, § 83-120.1.

20-76-209. Payment of certain contributions and withholdings by Department of Human Services generally.

(a) The appropriate division of the Department of Human Services is authorized to pay the employer's portion of contributions and withholdings required by the federal and state income tax laws, the Federal Insurance Contributions Law, the Workers' Compensation Law, § 11-9-101 et seq., and the Department of Workforce Services Law, § 11-10-101 et seq., in all cases wherein the recipient has been determined to be the employer of the provider and, as such, required to withhold an amount from the employee's wage and contribute an amount based upon the wages under the provisions of the above enumerated acts.

(b) The appropriate division shall report, pay, or contribute the amounts from the appropriation for paying grants under the program concerned.

History. Acts 1985, No. 649, § 24; A.S.A. 1947, § 83-102.2.

U.S. Code. The Federal Insurance

Contributions Act, referred to in this section, is codified as 26 U.S.C. § 3101 et seq.

20-76-210. Payment of certain contributions and withholdings — Certain nursing home care projects.

(a) The appropriate division of the Department of Human Services is authorized to pay the employer's portion of contributions and withholdings required by the federal and state income tax laws, the Federal Insurance Contributions Act, the Workers' Compensation Law, § 11-9-

101 et seq., and the Department of Workforce Services Law, § 11-10-101 et seq., in all cases wherein the homemaker and home health aid trainee is participating in the subsidized employment project to prevent premature nursing home care.

(b) The appropriate division shall report, pay, or contribute the amounts from the appropriation for paying grants under this project.

(c) Beneficiaries or trainees under this program shall not be eligible to participate in the Arkansas Public Employees' Retirement System but shall be entitled to receive sick and vacation leave as provided for state employees.

History. Acts 1985, No. 649, § 37; A.S.A. 1947, § 83-102.3.

Publisher's Notes. Acts 1985, No. 649, § 37 provided, in part, that the Division of Social Services (now an appropriate division of the Department of Human Services) was authorized to pay all adminis-

trative costs, including state retirement for all employees administering the grant from this appropriation.

U.S. Code. The Federal Insurance Contributions Act, referred to in this section, is codified as 26 U.S.C. § 3101 et seq.

RESEARCH REFERENCES

ALR. Construction and Application of Federal Insurance Contributions Act, 26 U.S.C. §§ 3101 et seq. — Supreme Court Cases. 7 A.L.R. Fed. 3d Art. 4 (2016).

20-76-211. Director's office of Department of Human Services — Client Specific Emergency Services Revolving Fund Paying Account.

(a) The Director's office of the Department of Human Services shall establish and maintain as a cash fund account the Client Specific Emergency Services Revolving Fund Paying Account consisting of federal grants, aids, cash donations, reimbursements, and state general revenue, not to exceed a daily balance of ten thousand dollars (\$10,000), for delivery of immediate care, short-term, or emergency services to eligible clients.

(b) The account shall be established and maintained in accordance with procedures established by the Chief Fiscal Officer of the State for cash funds and shall be administered under the direction of the Director of the Department of Human Services.

History. Acts 1985, No. 772, § 9; 1995, No. 1198, § 64; 1997, No. 1360, § 66; 2017, No. 913, § 2.

Publisher's Notes. Acts 1995, No. 1198, § 64 is also codified as § 19-5-1077.

Amendments. The 2017 amendment substituted "Director's office of Depart-

ment of Human Services" for "Division of Administrative Services" in the section heading; and, in (a), substituted "Director's office" for "Division of Administrative Services" and "shall establish" for "is hereby authorized to establish".

20-76-212. Reimbursement rate to providers — Arkansas Medicaid Program.

Notwithstanding any other provision in federal law or departmental commitment which may exist to the contrary, the Department of Human Services shall not increase any reimbursement rate to any provider or provider groups supported in whole or in part by funds administered by the Department of Human Services, nor shall it adopt any other rule, regulation, or amendment to the Arkansas Medicaid Program that would result in an obligation of the general revenues of the state without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

History. Acts 1992 (2nd Ex. Sess.), No. 3, § 3.

20-76-213. Electronic benefit transfer system for food stamps.

The Division of Medical Services of the Department of Human Services shall establish a program utilizing an electronic benefit transfer system for the distribution and redemption of food stamps, whereby food stamp recipients will no longer use paper coupons to participate in the federal food stamp program.

History. Acts 1993, No. 134, § 2.

Publisher's Notes. Acts 1993, No. 134, § 1, provided: "LEGISLATIVE PURPOSE. The Seventy-Ninth General Assembly hereby acknowledges that the federal food stamp program as it is now administered in Arkansas is subject to misuse and is demeaning to recipients. There are, however, electronic benefit transfer systems being used in other

states that are more cost-effective, less subject to abuse, and are generally better received by retailers and food stamp recipients. It is the purpose of this Act to establish a program utilizing an electronic benefit transfer system, whereby food stamp recipients use a card similar to a credit card instead of paper coupons to participate in the federal food stamp program."

20-76-214. Payment of certain contributions and withholdings — Transitional employment assistance.

(a) The Department of Human Services is authorized to pay the employer's portion of contributions and withholdings required by the federal and state income tax laws, the Federal Insurance Contributions Act, the Workers' Compensation Law, § 11-9-101 et seq., the Department of Workforce Services Law, § 11-10-101 et seq., and private medical insurance premiums for eligible individuals where that is necessary to achieve employment assistance.

(b)(1) Transitional employment assistance recipients shall not be deemed to be state employees solely as a consequence of receiving transitional employment assistance benefits and shall not be eligible to participate in the Arkansas Public Employees' Retirement System solely as a consequence of receiving transitional employment assistance benefits.

(2) Transitional employment assistance recipients who are employed by the state shall be eligible for the same benefits as an employee who performs similar work and is not a transitional employment assistance recipient.

History. Acts 1997, No. 1058, § 7. Contributions Act, referred to in this section is codified as 26 U.S.C. § 3128.
U.S. Code. The Federal Insurance

RESEARCH REFERENCES

ALR. Construction and Application of Federal Insurance Contributions Act, 26 U.S.C. §§ 3101 et seq. — Supreme Court Cases. 7 A.L.R. Fed. 3d Art. 4 (2016).

20-76-215. [Deleted.]

A.C.R.C. Notes. Former § 20-76-215, regarding Administrative Services and the Client Specific Emergency Services Revolving Fund Paying Account, was identical to § 20-76-211 and has been deleted at the direction of the Arkansas Code Revision Commission. The section was derived from Acts 1997, No. 1360, § 66.

SUBCHAPTER 3 — SOCIAL SECURITY DISABILITY DETERMINATION

SECTION.

- 20-76-301. State Department for Social Security Administration Disability Determination — Creation.
- 20-76-302. State Department for Social Security Administration Disability Determination — Director — Bonds.
- 20-76-303. State Department for Social Security Administration

SECTION.

- Disability Determination and director — Powers and duties.
- 20-76-304. Validation of contracts between State of Arkansas and United States.
- 20-76-305. Federal Disability Determination Fund — Creation.
- 20-76-306. Use of subpoenas in hearings on benefit determinations.

Effective Dates. Acts 1961 (2nd Ex. Sess.), No. 14, § 12: Oct. 10, 1961. Emergency clause provided: “It is hereby found and determined by the General Assembly that the volume of cases for disability determination under OASI is increasing and that a higher degree of service can be rendered by the establishment of a separate State department for handling the program. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in full force from and after its passage and approval.”
Acts 1965, No. 177, § 2: July 1, 1965.
Acts 1999, No. 4, § 5: Jan. 26, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly, that existing law

hinders the ability of the State Department for Social Security Administration Disability Determination to conduct investigations into benefit determination and benefit fraud; and any delay in the effective date of this act could cause harm to the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-76-301. State Department for Social Security Administration Disability Determination — Creation.

There is created and established at the seat of government of this state a department of state to be designated and known as the "State Department for Social Security Administration Disability Determination".

History. Acts 1961 (2nd Ex. Sess.), No. 14, § 1; 1965, No. 177, § 1; A.S.A. 1947, § 83-801.

20-76-302. State Department for Social Security Administration Disability Determination — Director — Bonds.

(a) The executive head of the State Department for Social Security Administration Disability Determination is designated as the director.

(b) The Director of the State Department for Social Security Administration Disability Determination shall be a resident elector of this state at least thirty (30) years of age, of good moral character, and of demonstrated ability in the field of his or her employment.

(c) The director shall be appointed by and serve at the pleasure of the Governor.

(d) Before entering upon his or her duties of employment, the director shall take, subscribe, and file in the office of the Secretary of State an oath or affirmation to support the United States Constitution and the Arkansas Constitution and to faithfully discharge the duties of employment upon which he or she is about to enter.

(e) The director shall furnish bond with a corporate surety thereon to the State of Arkansas in the penal sum of twenty-five thousand dollars (\$25,000) conditioned upon the faithful performance of his or her duties and for the proper accounting of all funds received and disbursed by him or her. The original of the bond shall be filed in the office of the Secretary of State, and an executed counterpart of the surety bond shall be filed in the office of the Auditor of State.

(f) The director shall be disbursing agent for the department but shall not be required to furnish additional bond as the disbursing agent.

(g) Other employees of the department required by the director to do so shall furnish and file bonds, conditioned as above, or fidelity bonds with the director. These bonds shall be in such penal sums as shall be determined by the director.

(h) The premiums on all such bonds shall be paid from appropriations made available to the department.

History. Acts 1961 (2nd Ex. Sess.), No. 14, §§ 2, 3; A.S.A. 1947, §§ 83-802, 83-803.

A.C.R.C. Notes. The operation of the bond requirement of this section was suspended by adoption of a self-insured fidel-

ity bond program for public officers, officials and employees, effective July 20, 1987, pursuant to § 21-2-701 et seq. The requirement may again become effective upon cessation of coverage under that program. See § 21-2-703.

20-76-303. State Department for Social Security Administration Disability Determination and director — Powers and duties.

It shall be the function, power, and duty of the State Department for Social Security Administration Disability Determination, or the Director of the State Department for Social Security Administration Disability Determination:

(1) To enter into agreements with the United States Department of Health and Human Services and the United States Secretary of Health and Human Services whereby the State Department for Social Security Administration Disability Determination, with respect to all individuals in this state, or with respect to such classes of individuals in this state as may be designated in the agreement, will, in the case of any individual, determine whether or not he or she is under a disability and of the day the disability began and of the day on which the disability ceased. For the purposes hereof, the term "disability" shall be as defined in any agreement or by applicable law;

(2) To accept and deposit into the State Treasury any funds from whatever source received and to withdraw therefrom such funds as may be required to carry out its functions, powers, and duties and, with respect thereto, to comply fully with the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq., and the Arkansas Procurement Law, § 19-11-201 et seq., and, where more restrictive, with the terms of any agreement entered into with the secretary in relation to the use of any funds made available to the State Department for Social Security Administration Disability Determination by the United States, or by any department or agency thereof. However, the State Department for Social Security Administration Disability Determination shall not have the authority to commit this state, either directly or indirectly, to the expenditure of any state funds in the absence of specific authority granted by the General Assembly; and

(3) To take such other action, not inconsistent with law, as shall be necessary or desirable to carry out effectively the purposes and intent of this subchapter.

History. Acts 1961 (2nd Ex. Sess.), No. 14, § 4; A.S.A. 1947, § 83-804.

Publisher's Notes. Acts 1961 (2nd Ex. Sess.), No. 14, § 6, provided that the State Board for Vocational Education and the Director of Rehabilitation Service should be divested of all functions, powers, and duties relating to the subject matter of this subchapter which should be transferred to the Director of the State Depart-

ment for Social Security Administration Disability Determination and that the director should take over all records, files, books, papers, furniture, fixtures, and equipment relating to the subject matter.

For federal law authorizing agreements between state and federal government permitting state to make determination of disability, see 42 U.S.C. § 421.

20-76-304. Validation of contracts between State of Arkansas and United States.

(a) Any executory contract or agreement, or applicable part thereof, entered into by and between this state, or any officer or agency thereof, and the United States, or any officer or agency thereof, in relation to the subject matter of this subchapter is validated, ratified, and confirmed in all respects. However, on and after October 10, 1961, the State Department for Social Security Administration Disability Determination shall be substituted for the state agency named in any contract or agreement in relation to the subject matter of this subchapter.

(b) However, nothing contained in this section shall be construed as an abridgement of the right of the department, or of the Director of the State Department for Social Security Administration Disability Determination, to enter into a new agreement to succeed to any executory contract or agreement in relation to the subject matter of this subchapter.

History. Acts 1961 (2nd Ex. Sess.), No. 14, § 5; A.S.A. 1947, § 83-805.

20-76-305. Federal Disability Determination Fund — Creation.

There is created and established in the State Treasury a fund to be designated and known as the "Federal Disability Determination Fund", and all moneys received for these purposes shall be deposited into the fund.

History. Acts 1961 (2nd Ex. Sess.), No. 14, § 7; A.S.A. 1947, § 83-807.

20-76-306. Use of subpoenas in hearings on benefit determinations.

(a) The Director of the State Department for Social Security Administration Disability Determination or the counsel for the State Department for Social Security Administration Disability Determination is authorized to require the attendance of witnesses and the production of books, records, or other documents through the issuance of subpoenas when the testimony or information is necessary to adequately present the position of the State Department for Social Security Administration Disability Determination when making fair hearing determinations or conducting investigations relating to public assistance benefits.

(b) Subpoenas issued pursuant to the authority of the director shall be substantially in the following form:

"The State of Arkansas to the Sheriff of _____ County: You are commanded to subpoena (name), (address) to appear at _____ on (date) at (time), and testify and/or produce the following documents, to wit: _____ in a matter of (style of proceeding).

WITNESS my hand on (date).

(Signature of director or agency counsel)".

History.

Acts 1999, No. 4, § 1.

SUBCHAPTER 4 — GRANTS OF ASSISTANCE

SECTION.

- 20-76-401. Eligibility generally — Transitional Employment Assistance Program.
- 20-76-402. Work activities.
- 20-76-403. Application — Fraud.
- 20-76-404. Duration of assistance — Extended support services.
- 20-76-405. Diversion from assistance.
- 20-76-406. [Repealed.]
- 20-76-407. Micro-lending program and individual development accounts.
- 20-76-408. Appeal to Department of Human Services.
- 20-76-409. Opt out.
- 20-76-410. Administrative sanctions — Transitional employment assistance.
- 20-76-411. [Repealed.]
- 20-76-412. Abandonment — Duties of Department of Human Services.
- 20-76-413 — 20-76-417. [Repealed.]
- 20-76-418. Foster care — Reduction in long-term care.
- 20-76-419. Blind persons generally.
- 20-76-420. Blind persons — Choice of eye care.
- 20-76-421. Aged and blind persons generally.
- 20-76-422. Aged, blind, and disabled — Conversion from state to federal program.

SECTION.

- 20-76-423. Aged, blind, and disabled — Supplemental Security Income — Legislative intent.
- 20-76-424 — 20-76-428. [Repealed.]
- 20-76-429. Receipt of additional property or income by assistance recipient.
- 20-76-430. [Repealed.]
- 20-76-431. Transfer of property prohibited.
- 20-76-432. Removal to another county.
- 20-76-433. Records — Confidentiality.
- 20-76-434. Maintenance of list of recipients.
- 20-76-435. No entitlement to assistance.
- 20-76-436. Recovery of benefits from recipients' estates.
- 20-76-437. Reporting — Transitional employment assistance.
- 20-76-438. Purpose.
- 20-76-439. Self-sufficiency — Assessments, personal responsibility agreements, and supportive services.
- 20-76-440. [Repealed.]
- 20-76-441, 20-76-442. [Repealed.]
- 20-76-443. Education and training.
- 20-76-444. Arkansas Work Pays Program — Created — Duties.
- 20-76-445. Career Pathways Initiative — Findings.
- 20-76-446. Community Investment Initiative.

Cross References. Nonsupport, Criminal Code, § 5-26-401 et seq.

Preambles. Acts 1959, No. 301 contained a preamble which read: "Whereas, the average grant of persons receiving public assistance in the State of Tennessee is Forty Four Dollars (\$44.00), and

"Whereas, the average grant for persons receiving public assistance in the state of Mississippi is Twenty-Nine Dollars (\$29.00), and

"Whereas, the average grant for persons receiving public assistance in the State of Arkansas is Fifty Dollars (\$50.00), and

"Whereas, persons are moving from the states of Tennessee and Mississippi to the State of Arkansas for the sole reason of receiving a greater amount of public assistance than they had received in their home state, and

"Whereas, this influx of sub-marginal persons from the states of Tennessee and

Mississippi to the State of Arkansas results in lowering the amount of assistance that the State of Arkansas can give to persons who have spent most of their life in this state,

"Now, Therefore"

Acts 1981, No. 246 contained a preamble which read: "Whereas, Public Law 96-272 requires all states to enact legislation by October 1, 1982 to set goals beginning with fiscal year 1983 as to the maximum number of children who will continue to receive payment under Title IV-E of the Social Security Act;

"Now, therefore"

Effective Dates. Acts 1939, No. 280, § 41: Mar. 10, 1939. Emergency clause provided: "It is hereby ascertained and declared to be a fact that there are many needy aged, dependent children, needy blind, crippled children and other dependent persons who are suffering for the want of care, hospitalization, medical attention and other comforts of life; that Federal Funds are available, if matched by State Funds; that the unfortunate of this State can obtain the necessary relief only by the remedies set up in this act. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force and effect from and after its passage and approval."

Acts 1941, No. 274, § 8: Mar. 26, 1941. Emergency clause provided: "It is found by the General Assembly that the Social Security Board or other federal agencies cooperating with the State of Arkansas in aiding and assisting the aged, the blind, crippled children, etc., require a merit system or civil service plan for the employees of the Welfare Department who are paid in whole or in part with federal funds; that the Social Security Act requires that such records of said Department as concern assistance matters be held and treated as confidential; that the preservation of the public peace, health and safety require this act to go into effect without delay; an emergency is therefore declared and this act shall take effect and be in force from and after its passage."

Acts 1951, No. 229, § 2: Mar. 1, 1951. Emergency clause provided: "Whereas, it is ascertained that a large number of persons have assigned or transferred their property for the purpose of rendering

themselves eligible for assistance grants from the State Welfare Department; therefore, an emergency is found to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after passage and approval."

Acts 1951, No. 308, § 3: Mar. 19, 1951. Emergency clause provided: "It is hereby ascertained and declared to be a fact that there are many needy aged, dependent children, needy blind, crippled children, and other dependent persons who are suffering for the want of care, hospitalization, medical attention and other comforts of life; that the federal funds are available, if matched by state funds; that the unfortunate of this state can obtain necessary relief only by the remedy set up in this act. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force and effect from and after its passage and approval."

Acts 1951, No. 309, § 3: Mar. 19, 1951. Emergency clause provided: "It is hereby ascertained and declared to be a fact that there are many permanently and totally disabled persons who are in need of food and other necessities of life; that federal funds are available, if matched by state funds; that the needy permanently and totally disabled persons can obtain the necessary relief only by remedy set up in this act. Therefore, an emergency is declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

Acts 1953, No. 231, § 10: Mar. 6, 1953. Emergency clause provided: "Whereas many acts of family desertion have thrown the burden of supporting their family upon the State and the existing laws provide no means by which the State can recover such payments from a divorced spouse who has refused or neglects to pay support, or from illegitimate fathers or mothers who refuse to support their children and whereas it has been found that cases certified by Welfare officials to the Deputy Prosecuting Attorneys and other prosecuting officials have become a pressing burden on said officials and have resulted in little or no remuneration to the State for the services rendered by them, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health and safety, shall take effect and be in force from and after its passage and approval."

neration to said officials, resulting in the neglecting of said cases causing great financial losses under present laws of Welfare payments to dependents of able bodied parents and whereas, H. R. 6000 as passed by Congress requires that the various States must provide for prompt notice to appropriate law enforcement officials in any case in which Federal Aid is furnished a child who has been deserted or abandoned by a parent and whereas the rapid increase in the number of persons receiving public assistance is preventing the State from rendering adequate assistance to those most deserving of assistance and who have no other source of assistance; and whereas it is essential to the public health, safety and interest that these conditions be remedied an emergency is hereby declared to exist, and this act shall be in effect from and after its approval."

Acts 1961, No. 257, § 2: July 1, 1962.

Acts 1963, No. 8, § 2: Feb. 4, 1963. Emergency clause provided: "Whereas, Federal legislation has authorized Federal moneys to be paid on a matching basis to the various states to Seventy Dollars (\$70.00) per month, and whereas, the present maximum payment is now Sixty-Five Dollars (\$65.00) per month, and whereas, there are many cases in the State where the needs of the blind persons have not been met by the welfare grant, and whereas, the authorized increase has been given to persons who receive lower welfare grants, and whereas, blind persons who maintain their own households are more in need of an increase in their grant than persons who are living with relatives, and whereas, at the present time, we are penalizing blind persons who are living by themselves, therefore, an emergency is declared to exist and this Act, being necessary for preservation of the public peace, health, safety and welfare, shall take effect and be in force from the date of its approval."

Acts 1965 (1st Ex. Sess.), No. 34, § 5: approved June 9, 1965. Emergency clause provided: "Whereas, it is anticipated that Federal legislation may be enacted by the Federal Government to authorize an increase in Federal moneys to be paid on a matching basis to the various states for old age assistance, aid to the blind and aid to dependent children during the next biennium, wherein payments to old age recipients and recipients of aid to the

blind may be paid when the recipients are inmates of tax supported institutions under certain conditions, and

"Whereas, Federal legislation may allow grants to be paid to minors between the ages of 18 and 21 who are attending high school or receiving vocational training, and

"Whereas, there are many cases in the State where the needs of old persons, blind persons and dependent children have not been met by the welfare grant due to restrictions on payments of a grant into institutions and due to restrictions on the age limit for payment to dependent children, and

"Whereas, this Act is necessary in order to take advantage of any increase in Federal moneys to be paid on a matching basis during the next biennium so that the needs of old persons and blind persons in institutions of this State may be more adequately met and the needs of dependent children who are attempting to finish a high school education or receive vocational training when they are over 18 years of age and under 21 years of age may be more adequately met; therefore, an emergency is declared to exist and this Act, being necessary for the immediate preservation of the public peace, health, safety and welfare, shall be in full force and effect from and after its passage."

Acts 1967, No. 374, § 6: Mar. 15, 1967. Emergency clause provided: "It is hereby found and determined by the General Assembly that in order to comply with applicable federal regulations, it is immediately necessary that the residence requirements for eligibility for public welfare assistance be repealed. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 667, § 6: Mar. 30, 1979. Emergency clause provided: "It is hereby found by the General Assembly that there are able-bodied individuals who have refused employment and are presently receiving welfare benefits which are paid in part by the State of Arkansas, that in so receiving these benefits, they are creating a great financial strain on the State and are depriving those that are more needy and worthy of receiving these funds, and that only by the immediate passage of this

Act can these conditions be bettered. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1981, No. 934, § 43: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1985, No. 649, § 46: July 1, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1985 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1985 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1985."

Acts 1999, No. 1567, § 28: July 1, 1999. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the United States Congress has amended the laws pertaining to certain federally funded public assistance programs; that these

programs are crucial to the life and health of many needy citizens of the State of Arkansas who otherwise will be unable to obtain food, clothing, shelter, or medical care; that federal funds have already been appropriated for this program and any delays could work irreparable harm upon the proper administration of essential governmental programs and the State of Arkansas may risk forfeiture of the federal funding; that this act so provides. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, shall be in full force and effect on July 1, 1999."

Acts 2003, No. 1306, § 7: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it is crucial to the life and health of many needy citizens of the State of Arkansas that the outcomes of the transitional employment program are more clearly defined and monitored in order that these public assistance programs can be better focused on meeting the real needs of needy Arkansans, that the United States Congress is in the process of reauthorizing the federal laws which guide and fund these programs, and that it is necessary, in order to avoid any disruption in federal funding, that the program outcomes be clearly defined so as to provide better information to the federal government about the progress of these programs in Arkansas. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003."

Acts 2005, No. 1705, § 20: Effective date clause provided:

“(a) Section 10 of this act shall become effective immediately upon enactment.

“(b) Sections 3, 6, 7, 9, 11, 12 and 14 through 18 shall become effective upon certification from the Directors of the Employment Security Department and the Department of Human Services with consent from the Governor and the Chair of the Senate Committee on Public Health, Welfare and Labor and the Chair of the House Committee on Public Health, Welfare and Labor.

“(c)(1) Section 19 shall become effective on January 1, 2006.

“(2) Within Section 19 of this act:

“(A) The effective date for the Arkansas Work Pays Program, Arkansas Code § 20-76-444, may be delayed up to July 1, 2006 if the Transitional Employment Board certifies to the Governor that the transfer of Transitional Employment Assistance Program will not take place until January 1, 2006 or later and that it is in the public interest that the effective date of Work Pays be delayed.

“(B) Arkansas Code § 20-76-445 shall become effective July 1, 2005.

“(C) Arkansas Code § 20-76-446 shall become effective on January 1, 2006.”

Acts 2005, No. 1705, § 21: July 1, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that due to increasing requirements in the Transitional Employment Assistance Program amendments made in sections 4, 5, 8, 12, and 13 of this act are necessary for continued effectiveness of the program and provision of services to families. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety, section 10 will be in full force and effect immediately and sections 4, 5, 8, and 13 shall be in full force and effect on and after July 1, 2005.”

Acts 2007, No. 514, § 25: Mar. 27, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the state fiscal year begins July 1, 2007; that the state agencies responsible for the programs under this act require time to prepare for the program changes created in this act; that families in need of temporary assistance may not receive the needed assistance if this act does not

become effective immediately; and that any delay in the effective date of this act could work irreparable harm on families in need of temporary assistance. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 758, § 29, provided: “Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.” The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Acts 2015, No. 907, § 15: July 1, 2015. Emergency clause provided:

“(a) It is found and determined by the General Assembly of the State of Arkansas that federal law requires the implementation of state-level workforce development acts to authorize federal funding for workforce development programs; that the Arkansas Workforce Development Board must begin work immediately to prepare for the inauguration of local workforce development boards; that the first phase of work by the Arkansas Workforce Development Board must be completed to coincide with the beginning of the 2015-2016 fiscal year on July 1, 2015. Therefore, an emergency is declared to exist, and § 15-4-37-3704 [15-4-3704] being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

“(1) The date of its approval by the Governor;

“(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

“(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

“(b) It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the

appropriation of funds for more than a one (1) year period; that the effectiveness of this act on July 1, 2015, is essential to the inauguration of the programs for which this act is provided, and that in the event of an extension of the legislative session, the delay in the effective date of this act beyond July 1, 2015, could work irreparable harm upon the proper administra-

tion and provision of essential programs created in the act. Therefore, an emergency is hereby declared to exist and, except for § 15-4-3704, this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2015."

RESEARCH REFERENCES

ALR. Tax refund as income or resource to be considered in determining eligibility for benefits under Aid to Families with Dependent Children program. 3 A.L.R.4th 1074.

Eligibility for welfare benefits, under maximum-assets limitations, as affected by expenditures or disposal of assets. 19 A.L.R.4th 146.

Eligibility for welfare benefits as affected by claimant's status as trust beneficiary. 21 A.L.R.4th 729.

Criminal liability under state laws in connection with application for or receipt of public welfare benefits. 22 A.L.R.4th 534.

Right to credit on child support payments for Social Security or other government dependency payments made for benefit of child, 34 A.L.R.5th 447.

Am. Jur. 79 Am. Jur. 2d, Welfare Laws, § 1 et seq.

C.J.S. 81 C.J.S., Soc. Sec., § 1 et seq.

20-76-401. Eligibility generally — Transitional Employment Assistance Program.

(a)(1) The Transitional Employment Assistance Program is created.
(2)(A) The program shall be administered by the Department of Human Services and the Department of Workforce Services.

(B) Subject to the order of the Governor, the Department of Workforce Services may take full authority for administering the Transitional Employment Assistance Program.

(C) The Department of Workforce Services may contract with the Department of Human Services for administrative services.

(3) The Department of Workforce Services may operate a separate Transitional Employment Assistance Program Two-Parent Program funded by state funds not claimed for the federal Temporary Assistance for Needy Families program maintenance of effort requirement if the Director of the Department of Workforce Services deems such action necessary to avoid the risk of not meeting the two-parent work participation rate.

(b) Eligibility for transitional employment assistance is limited to applicants for or recipients of assistance who:

(1) Are income and resource eligible; and

(2) Sign and comply with a personal responsibility agreement.

(c) The Department of Human Services shall promulgate regulations to determine resource eligibility and benefit levels for participating families. The regulations shall be subject to review and recommendation by the Arkansas Workforce Development Board and shall include,

but not be limited to, the following categories of income and resource disregards:

- (1) To reward work, earned income from sources other than transitional employment assistance;
 - (2) A certain percentage of a family's gross monthly income;
 - (3) The family's homestead;
 - (4) An operable motor vehicle per family;
 - (5) Household and personal goods;
 - (6) Income-producing property;
 - (7) Moneys deposited into an approved individual development account or approved escrow account for business or career development;
 - (8) Any other property or resource specified in the transitional employment assistance implementation plan which is determined to be cost efficient to exclude or which must be excluded due to federal or state law; and
 - (9) Any investment earmarked for retirement or education, such as a retirement plan authorized by section 401(k) or section 529 of the Internal Revenue Code of 1986, as it existed on January 1, 2007.
- (d) Any person who makes an application for assistance shall have the burden of proving eligibility for the assistance.

History. Acts 1939, No. 280, § 18; 1951, No. 229, § 1; 1953, No. 177, § 1; 1959, No. 301, § 1; A.S.A. 1947, §§ 83-123 — 83-123.2; Acts 1997, No. 1058, § 8; 1999, No. 1567, § 11; 2003, No. 1473, § 43; 2005, No. 1705, § 11; 2007, No. 514, § 10.

A.C.R.C. Notes. The Temporary Assis-

tance for Needy Families Oversight Board was abolished via repeal in Acts 2015, No. 907, § 8, and replaced by the Arkansas Workforce Development Board by Act 907.

U.S. Code. Section 401(k) and section 529 of the Internal Revenue Code of 1986, referred to in this section, are codified at 26 U.S.C. § 401(k) and 26 U.S.C. § 529.

RESEARCH REFERENCES

ALR. Validity, construction, and application of state statutes limiting or barring

public health care to indigent aliens. 113 A.L.R.5th 95.

20-76-402. Work activities.

(a) The Department of Workforce Services shall develop and describe categories of approved work activities for transitional employment assistance recipients in accordance with this section. The rules shall be subject to review and recommendation by the Arkansas Workforce Development Board. Approved work activities may include unsubsidized employment, subsidized private sector employment, subsidized public sector employment, education or training, vocational educational training, skills training, job search and job readiness assistance, on-the-job training, micro enterprise, community service, and work experience. For purposes of this section:

- (1) "Unsubsidized employment" is full-time employment or part-time employment that is not directly supplemented by federal or state funds;
- (2)(A) "Subsidized private sector employment" is employment in a private for-profit enterprise or a private not-for-profit enterprise

which is directly supplemented by federal or state funds. A program recipient in subsidized private sector employment shall be eligible for the same benefits as a nonsubsidized employee who performs similar work. Before receiving any subsidy or incentive, an employer shall enter into a written contract with the Department of Workforce Services which may include, but not be limited to, provisions addressing any of the following:

(i) Payment schedules for any subsidy or incentive such as deferred payments based on retention of the recipient in employment;

(ii) Durational requirements for the employer to retain the recipient in employment;

(iii) Training to be provided to the recipient by the employer;

(iv) Contributions, if any, made to the recipient's individual development account; and

(v) Weighting of incentive payments proportionally to the extent to which the recipient has limitations associated with the long-term receipt of welfare and difficulty in sustaining employment. In establishing incentive payments, the Department of Workforce Services shall consider the extent of the recipient's prior receipt of welfare, lack of employment experience, lack of education, lack of job skills, and other appropriate factors.

(B) The Department of Workforce Services may require an employer to repay some or all of a subsidy or incentive previously paid to an employer under the program unless the recipient is terminated for cause;

(3)(A) "Subsidized public sector employment" is employment by an agency of the federal, state, or local government which is directly supplemented by federal or state funds. A program recipient in subsidized public sector employment shall be eligible for the same benefits as a nonsubsidized employee who performs similar work. Before receiving any subsidy or incentive, an employer shall enter into a written contract with the Department of Workforce Services that may include, but not be limited to, provisions addressing any of the following:

(i) Payment schedules for any subsidy or incentive such as deferred payments based on retention of the recipient in employment;

(ii) Durational requirements for the employer to retain the recipient in employment;

(iii) Training to be provided to the recipient by the employer;

(iv) Contributions, if any, made to the recipient's individual development account; and

(v) Weighting of incentive payments proportionally to the extent to which the recipient has limitations associated with the long-term receipt of welfare and difficulty in sustaining employment. In establishing incentive payments, the Department of Workforce Services shall consider the extent of the recipient's prior receipt of welfare, lack of employment experience, lack of education, lack of job skills, and other appropriate factors.

(B) The Department of Workforce Services may require an employer to repay some or all of a subsidy and incentive previously paid to an employer under the program unless the recipient is terminated for cause;

(4) "Work experience" is job-training experience at a supervised public or private not-for-profit agency or organization or with a private for-profit employer which is linked to education or training and substantially enhances a recipient's employability. Work experience may include work study, training-related practicums, and internships;

(5) "Job search assistance" may include supervised or unsupervised job-seeking activities. Job readiness assistance provides support for job-seeking activities, which may include:

(A) Orientation in the world of work and basic job-seeking and job-retention skills;

(B) Instruction in completing an application for employment and writing a resume;

(C) Instruction in conducting oneself during a job interview, including appropriate dress;

(D) Providing a recipient with access to an employment resource center that contains job listings, telephones, facsimile machines, typewriters, and word processors; and

(E) Preparation to seek or obtain employment, including life skills and literacy training, and substance abuse treatment, mental health treatment, or rehabilitation activities for those who are otherwise employable;

(6) "Education" includes elementary and secondary education, education to obtain the equivalent of a high school diploma, and education to learn English as a second language. In consultation with adult education or rehabilitative services, a person with a high school diploma or the equivalent who tests at less than a working functioning level shall be eligible to participate in basic remedial or adult education. If an individual does not have a high school diploma or equivalency, "education" also includes basic remedial education and adult education;

(7) "Vocational educational training" is postsecondary education, including, at least, programs at two-year or four-year colleges, universities, technical institutes, and vocational schools or training in a field directly related to a specific occupation;

(8) Job skills training directly related to employment provides job skills training in a specific occupation. Job skills training may include customized training designed to meet the needs of a specific employer or a specific industry;

(9) "On-the-job training" means training and work experience at a public or private not-for-profit agency or organization or with a private for-profit employer which provides an opportunity to obtain training and job supervision and provides employment upon satisfactory completion of training;

(10) School attendance at a high school or attendance at a program designed to prepare the recipient to receive a high school equivalency

diploma is a required program activity for each recipient eighteen (18) years of age or younger who:

(A) Has not completed high school or obtained a high school equivalency diploma;

(B) Is a dependent child or a head of household; and

(C) For whom it has not been determined that another program activity is more appropriate;

(11) Participation in medical, educational, counseling, and other services that are part of the recipient's personal responsibility agreement is a required activity for each teen parent who participates in the Transitional Employment Assistance Program; and

(12) "Community service" is time spent engaged in an approved activity at a government entity or community-based, charitable organization.

(b) All occupational training shall meet at least one (1) of the following requirements:

(1) Be on the statewide or appropriate area list of occupations in the "Guide to Educational Training Programs for Demand Occupations" published by the Department of Workforce Services;

(2) Be on that list for another area within the state to which the Transitional Employment Assistance Program recipient has signed a commitment to relocate;

(3) Be for a specific position for which an employer has submitted a letter demonstrating intent to hire persons upon successful completion of training; and

(4) Be in an occupation in local demand but not shown on the state or area demand list if the local demand is documented or will be documented by the area workforce development board through a state-prescribed methodology.

(c) Each state agency and each entity that contracts to provide services for a state agency shall establish recruitment and hiring goals which shall target ten percent (10%) of all jobs requiring a high school diploma or less to be filled with transitional employment assistance or food stamp recipients.

(d)(1) The Department of Workforce Services shall require participation in approved work activities to the maximum extent possible, subject to federal and state funding. If funds are projected to be insufficient to support full-time work activities by all program recipients who are required to participate in work activities, the Department of Workforce Services shall screen recipients and assign priority in accordance with the implementation plan.

(2) In accordance with the implementation plan, the Department of Workforce Services may limit a recipient's weekly work requirement to the minimum required to meet federal work activity requirements and may develop screening and prioritization procedures within employment opportunity districts or within counties based on the allocation of resources, the availability of community resources, or the work activity needs of the employment opportunity district or county.

(e)(1) Subject to subdivision (e)(2) of this section, an adult in a family receiving assistance under the program may fill a vacant employment position in order to engage in a work activity described in subsection (a) of this section.

(2) No adult in a work activity described in subsection (a) of this section which is funded, in whole or in part, by funds provided by the United States Government shall be employed or assigned:

(A) When any other individual is on layoff from the same or any substantially equivalent job; or

(B) If the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction in its workforce in order to fill the vacancy so created with an adult described in subdivision (e)(1) of this section.

(3) The Department of Workforce Services shall establish and maintain a grievance procedure for resolving complaints of alleged violations of subdivision (e)(2) of this section.

(4) Nothing in this subsection shall preempt or supersede any provision of state or local law that provides greater protection for employees from displacement.

(f) The Department of Workforce Services, subject to review and recommendation by the board, shall establish criteria to exempt or temporarily defer the following persons from any work activity requirement:

(1) An individual required to care for a recipient child until the child reaches twelve (12) months of age, if the caregiver is an active participant in a home-based or part-time center-based quality-approved early learning program, where available, that requires parental involvement and is approved by the Department of Education under the Arkansas Better Chance Program Act, § 6-45-101 et seq.;

(2) An individual required to care for a recipient child until the child reaches the maximum age specified by regulation, not to exceed twelve (12) months of age;

(3) A parent or caregiver with a disability, based upon criteria set forth in regulations;

(4) A woman in the third trimester of pregnancy;

(5) A parent or caregiver who is caring for a child relative with a disability or an adult relative with a disability, based upon criteria set forth in regulations;

(6) A minor parent less than eighteen (18) years of age who resides in the home of a parent or in an approved adult-supervised setting and who participates in full-time education or training;

(7) A teen parent head of household under twenty (20) years of age who maintains satisfactory attendance as a full-time student at a secondary school;

(8) An individual for whom support services necessary to engage in a work activity are not available;

(9) An individual who, as determined by a Department of Workforce Services case manager, is unable to participate in work activities due

directly to the effects of domestic violence. All case manager determinations made under this subdivision (f)(9) shall be reviewed by a supervisor within five (5) days of such determination;

(10) An individual unable to participate in a work activity due to extraordinary circumstances;

(11) A parent or caregiver over sixty (60) years of age; and

(12) Child-only cases.

History. Acts 1979, No. 667, §§ 1-3; A.S.A. 1947, §§ 83-123.3 — 83-123.5; Acts 1997, No. 1058, § 9; 1999, No. 1567, § 12; 2003, No. 1306, § 5; 2005, No. 1705, § 12; 2007, No. 514, § 10; 2015, No. 907, § 11.

A.C.R.C. Notes. References in (f)(3) and (5) have been changed to conform to the requirements of § 1-2-124.

The Temporary Assistance for Needy Families Oversight Board was abolished

via repeal in Acts 2015, No. 907, § 8, and replaced by the Arkansas Workforce Development Board by Act 907.

Amendments. The 2015 amendment substituted “shall” for “must” in the introductory language of (b); substituted “Transitional Employment Assistance Program” for “program” in (b)(2); and substituted “workforce development board” for “workforce investment board” in (b)(4).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Public Health and Welfare, Tran-

sitional Employment Assistance Program, 26 U. Ark. Little Rock L. Rev. 466.

20-76-403. Application — Fraud.

(a) The application for assistance shall contain a statement of the amount of both real and personal property in which the applicant has an interest and of all earned and unearned income which he or she may have at the time of the filing of the application and such other information as may be required by the Department of Human Services.

(b) Any assistance improperly paid shall be recoverable by the state as a debt due the state and, if applicable, the recipient shall be prosecuted under theft of public benefits, § 5-36-202.

(c)(1) All assistance provided under this chapter shall be reconsidered by the department as frequently as the department deems necessary. The amount of assistance may be entirely withdrawn by the department if the department is advised that the recipient's circumstances have altered sufficiently to warrant such action.

(2) Whoever shall withhold information in a periodic reconsideration that may result in a recipient's assistance being changed or withdrawn shall be guilty of fraud. Any money paid after information has been withheld shall be recoverable as a debt due the state.

(d) The department shall forthwith close any recipient's open case upon a judicial or administrative determination that the individual recipient has committed fraud in order to receive transitional employment assistance benefits. The case shall remain closed and the recipient shall remain ineligible until all indebtedness to the department is repaid with interest.

History. Acts 1939, No. 280, § 23;
1953, No. 177, § 5; A.S.A. 1947, § 83-129;
Acts 1997, No. 1058, § 10.

20-76-404. Duration of assistance — Extended support services.

(a)(1) Beginning July 1, 1998, the Department of Workforce Services shall not provide financial assistance to a family that includes an adult recipient who has received financial assistance for more than twenty-four (24) months, except as provided in subsection (c) of this section.

(2) The number of months need not be consecutive and shall include the time a recipient receives financial assistance from another state.

(3) The Department of Workforce Services may by regulation establish other limitations on the receipt of financial assistance not inconsistent with state or federal law.

(b)(1) The Department of Workforce Services shall certify to the Governor, the House Committee on Public Health, Welfare, and Labor, and the Senate Committee on Public Health, Welfare, and Labor when the support services necessary for program recipients to obtain employment or participate in allowable work activities are available.

(2) The Department of Workforce Services may certify subsets of program recipients, including without limitation recipients in a certain geographical area or employment opportunity district or program recipients with a high school diploma or high school equivalency diploma approved by the Department of Career Education.

(3) Before implementing the twenty-four-month cumulative limit on financial assistance, the Department of Workforce Services shall notify program recipients by direct mail or contact and by other means reasonably calculated to reach to current and potential program recipients, including, but not limited to, the posting of notices in county offices.

(c) The Department of Workforce Services shall exempt or temporarily defer within thirty (30) calendar days the following persons from the twenty-four-month cumulative limit on financial assistance:

(1) An individual, as determined by a Department of Workforce Services case manager, who cooperated and participated in activities, but was unable to obtain employment because of circumstances or barriers beyond his or her control;

(2) Child-only cases;

(3) An individual unable to obtain employment because of the lack of support services necessary to overcome barriers to employment;

(4) A parent or caregiver over sixty (60) years of age;

(5) A parent or caregiver who is caring for a disabled child relative or disabled adult relative, based upon criteria set forth in Department of Workforce Services regulations;

(6) A disabled parent or caregiver, based upon criteria set forth in Department of Workforce Services regulations;

(7) A parent less than eighteen (18) years of age who resides in the home of a parent or in an approved adult-supervised setting and who participates in full-time education or training;

(8) An individual, who as determined by a Department of Workforce Services case manager, is unable to obtain employment due directly to the effects of domestic violence. All case manager determinations made under this subdivision (c)(8) shall be reviewed by a supervisor within five (5) days of the determination;

(9) Other individuals as determined by the Department of Workforce Services, including, but not limited to, a child when necessary to protect the child from the risk of neglect, as defined by § 12-18-103(14); and

(10) Individuals participating in education and training activities who have reached the end of their twenty-four-month cumulative limit on financial assistance, have complied with all transitional employment assistance regulations, are making satisfactory academic progress as determined by the academic institution or training program in which the individual is currently enrolled, and are expected to complete the requirements for the education or training program within a reasonable period of time as defined in regulations issued by the Department of Workforce Services.

(d)(1) No months shall be counted toward a person's twenty-four-month cumulative limit on financial assistance while he or she is receiving a deferral or exemption.

(2) There shall be no limit on the length or the number of deferrals or exemptions granted each person as long as the person meets any of the criteria outlined in subsection (c) of this section.

(3) The Department of Workforce Services shall periodically review each case to determine whether the person still meets any of the criteria outlined in subsection (c) of this section.

(4)(A) The Department of Workforce Services shall carry out an enhanced review of all cases six (6) months before the expiration of the time limit.

(B) The review shall assess the barriers that remain to the adult or adults in the case obtaining employment, what enhanced services can be provided to enable him or her to obtain employment, and whether the case should be given a six-month extension or be exempted from the time limit.

(C) The Department of Workforce Services shall make every reasonable effort to deliver the available services identified in subdivision (d)(4)(B) of this section.

(D) The Department of Workforce Services shall grant an extension at the time for review if the client meets one (1) of the grounds for extension.

(E) The Department of Workforce Services shall carry out a further review at the end of the extension period.

(e)(1) A recipient who was eligible for Medicaid and loses his or her financial assistance due to earnings and whose income remains below one hundred eighty-five percent (185%) of the federal poverty level shall remain eligible for transitional Medicaid without reapplication during the immediately succeeding twelve-month period if private medical insurance is unavailable from the employer.

(2) A recipient who loses his or her financial assistance due to earnings and who is employed shall be eligible for:

(A) Childcare assistance at no cost and without reapplication for a cumulative period of twelve (12) months; and

(B) Twenty-four (24) additional months of childcare assistance provided on a sliding fee scale or other cost-sharing arrangement as determined by the Department of Workforce Services.

(3) The Department of Workforce Services may reduce the period of transitional child care to a total of twenty-four (24) months for recipients who lose assistance at a specified date after the Department of Workforce Services' decision to limit the assistance if the Department of Workforce Services certifies to the Governor and the Chief Fiscal Officer of the State that the reduction is necessary to avoid overspending the biennial budget for child care.

(4) The transitional childcare assistance available to former recipients shall not exceed the cumulative number of months provided under subdivisions (e)(2) and (3) of this section, regardless of whether the former recipient reenters the Transitional Employment Assistance Program.

(f)(1) The Department of Workforce Services shall deny Medicaid, childcare, and transportation assistance during the twelve-month period for any month in which the recipient's family does not include a dependent child.

(2) The Department of Workforce Services shall notify the recipient of transitional Medicaid, childcare, and transportation assistance when the recipient is notified of the termination of cash assistance. The notice shall include a description of the circumstances in which the transitional Medicaid and childcare assistance may be terminated.

(g)(1) In order to assist current and former program recipients in continuing training and upgrading skills, transitional education or training may be provided to a recipient for up to one (1) year after the recipient is no longer eligible to participate in the program due to employment earnings.

(2) Education or training resources available in the community at no additional cost to the Department of Workforce Services shall be used whenever possible.

(3) Transitional education or training shall be employment-related and may include education or training to improve a recipient's job skills in the recipient's existing area of employment or may include education or training to prepare a recipient for employment in another occupation.

(4) The Department of Workforce Services may enter into an agreement with an employer to share the costs relating to upgrading the skills of recipients hired by the employer.

(h) Other extended support services may be available to recipients no longer eligible for financial assistance under transitional employment assistance.

(i)(1) By August 1, 2001, the Department of Workforce Services shall develop a plan, subject to review and recommendation by the Arkansas

Workforce Development Board, to monitor and protect the safety and well-being of the children within a family whose temporary assistance is terminated for any reason other than the family's successful transition to economic self-sufficiency.

(2)(A) Actions required by the plan shall include at least one (1) home visit with the parents and children.

(B) Every reasonable effort shall be made to make contact with all families, including visits during evenings and on weekends.

(C) The first home visit shall occur within six (6) months after the termination of cash assistance.

(D) The purposes of the home visits shall include checking on the well-being of children in those families and determining whether the families need available services.

(3) The Department of Workforce Services may contract with other state agencies, private companies, local government agencies, or community organizations for the conducting of these visits.

(4) The board shall submit a report to the Governor and the Chair of the House Committee on Public Health, Welfare, and Labor and the Chair of the Senate Committee on Public Health, Welfare, and Labor that report on the outcomes of the home visits and provide separate information for families who left transitional assistance due to noncompliance and time limits.

(j) As part of the home visits, families shall be informed about the availability of Medicaid and ARKids First, food stamps, child care, housing assistance, any other supportive services offered by the Department of Workforce Services or the Department of Health designed to help meet the basic needs and well-being of children, federal and state earned income tax credits, individual development accounts, employment counseling services, and education and training opportunities designed to increase the future earnings and employment prospects of clients.

History. Acts 1953, No. 231, § 7; A.S.A. 1947, § 83-129.1; Acts 1997, No. 1058, § 11; 1999, No. 1567, § 13; 2001, No. 1264, §§ 7, 8; 2007, No. 514, §§ 11-13; 2009, No. 758, § 27; 2015, No. 1115, § 27.

A.C.R.C. Notes. The Temporary Assistance for Needy Families Oversight Board was abolished via repeal in Acts 2015, No. 907, § 8, and replaced by the Arkansas Workforce Development Board by Act 907.

Publisher's Notes. As to approval and

payment of physicians eligible to examine persons applying for assistance, see Acts 1953, No. 564.

Amendments. The 2015 amendment, in (b)(2), substituted "without limitation" for "but not limited to" and substituted "high school equivalency diploma approved by the Department of Career Education" for "general educational development certificate".

20-76-405. Diversion from assistance.

(a) When an applicant applies for employment assistance, the Department of Human Services shall determine whether the applicant is eligible to be diverted from receiving employment assistance. That

determination shall be based on an assessment conducted in conformity with regulations promulgated by the department.

(b) The department shall determine eligibility for diversion from assistance by considering whether but for the diversion from assistance the applicant would receive employment assistance. If the department determines that the applicant is eligible for diversion from assistance and the recipient agrees to the diversion, the department may provide a single loan payment of up to the amount of financial assistance that the applicant could receive during three (3) months if not diverted.

(c) An applicant may receive diversion loan assistance only one (1) time. Receipt of diversion loan assistance shall be accompanied by a written declaration by the recipient electing to forego transitional employment assistance financial assistance for one hundred (100) days as a condition of receiving the diversion loan assistance.

(d) A diversion from assistance is in lieu of other services described in this chapter.

History. Acts 1939, No. 280, § 24; A.S.A. 1947, § 83-130; Acts 1997, No. 1058, § 12.

20-76-406. [Repealed.]

Publisher's Notes. This section, concerning alternative benefits, was repealed by Acts 2007, No. 514, § 14. The section was derived from Acts 1939, No. 280, § 26; 1949, No. 192, §§ 1, 2; 1965 (2nd Ex. Sess.), No. 14, § 5; A.S.A. 1947, §§ 83-132 — 83-132.2; Acts 1997, No. 1058, § 13; 2005, No. 1705, § 13.

20-76-407. Micro-lending program and individual development accounts.

(a)(1) In accordance with their personal responsibility agreement, low-income entrepreneurs may escrow profits from their business enterprises which are not reinvested into their businesses into an account which will be placed in a micro-lending program and not be counted against their public assistance benefits until they accumulate an amount to be determined by the Department of Human Services for the period that they are eligible for the Transitional Employment Assistance Program. Under this section, participating low-income entrepreneurs who are otherwise eligible for transitional employment assistance shall not have their benefits reduced and shall not lose any transitional or extended support services available to them as program recipients for the life of the escrow account.

(2) The department will make available a micro-lending program to low-income entrepreneurs. For the purpose of this section, a "low-income entrepreneur" is one who is starting or expanding a business and who meets the eligibility criteria established by the department for the micro-lending program. A "micro-lending program" is one which provides training, technical assistance, and loan funds to low-income entrepreneurs to start or expand a business venture.

(3) Under this section, self-employment shall be considered an allowable work activity. To receive the self-employment exemption outlined in this section, low-income entrepreneurs shall be enrolled in the program and shall be enrolled in a micro-lending program providing entrepreneurship training, technical assistance, and peer support.

(b) The department shall establish an individual development account demonstration project.

(c) Federal funds received by the state pursuant to the Temporary Assistance for Needy Families Program shall be available for programs under this section.

History. Acts 1939, No. 280, § 19; A.S.A. 1947, § 83-124; Acts 1997, No. 1058, § 14; 1999, No. 1567, § 14.

20-76-408. Appeal to Department of Human Services.

If an application for assistance is denied in whole or in part, the applicant or recipient may appeal to the Department of Human Services in the manner and form prescribed by the department. The department shall, upon receipt of the appeal, give the applicant or recipient a reasonable notice of opportunity for a fair hearing pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1939, No. 280, § 29; A.S.A. 1947, § 83-135; Acts 1997, No. 1058, § 15.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Stafford, Separation of Powers and Arkansas Administrative Agencies: Distinguishing Ju-

dicial Power and Legislative Power, 7 U. Ark. Little Rock L.J. 279.

CASE NOTES

Cited: Hardin v. City of DeValls Bluff, 256 Ark. 480, 508 S.W.2d 559 (1974).

20-76-409. Opt out.

The State of Arkansas opts out of Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193.

History. Acts 1939, No. 280, § 25; 1951, No. 309, § 1; A.S.A. 1947, § 83-131; Acts 1997, No. 1058, § 16; 2017, No. 566, § 1.

Amendments. The 2017 amendment substituted "Opt out" for "Disqualification

and sanction" in the section heading, and rewrote the section text.

U.S. Code. Section 115 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is codified as 21 U.S.C. § 862a.

20-76-410. Administrative sanctions — Transitional employment assistance.

(a) A reduction in financial assistance or case closure shall be imposed in the following situations:

(1) The individual fails without good cause to cooperate with the Office of Child Support Enforcement;

(2) The individual refuses to accept employment without good cause;

(3) The individual quits employment without good cause;

(4) The individual fails without good cause to comply with the provisions of the employment plan;

(5) The individual fails without good cause to comply with the provisions of the personal responsibility agreement; or

(6) The individual flees prosecution or custody or confinement following conviction or is in violation of the terms or conditions of parole or probation.

(b) The Department of Workforce Services may define by rule additional situations that require sanction, establish additional sanctions, and provide for administrative disqualification.

(c)(1) If a parent fails to comply with the Transitional Employment Assistance Program requirements, financial assistance for the child or children may be continued under subdivisions (a)(1)-(5) of this section, and the department shall suspend the family's assistance for one (1) month.

(2)(A) During the thirty (30) days after suspension of benefits, the department shall make strong efforts to arrange a face-to-face meeting with the parent, including a home visit to the family if necessary.

(B) In the face-to-face meeting, the department shall explain:

(i) The reason that the family has been found to be noncompliant;

(ii) The penalty that will be imposed; and

(iii) The opportunity to correct that noncompliance and avoid the penalty.

(C) The department shall also seek to determine the well-being of the child or children and whether additional services or actions are required to protect the well-being of the child or children.

(D) If the parent comes into compliance within fifteen (15) business days after the face-to-face meeting and maintains compliance for two (2) weeks, the suspended benefits shall be paid to the family.

(3) If the parent fails to come into compliance during the period of suspended benefits, the family's financial assistance may be reduced by up to twenty-five percent (25%) for the next three (3) months if noncompliance continues.

(4) If the parent's noncompliance continues after the fourth month, the department shall suspend the family's financial assistance for two (2) months.

(5)(A) During the thirty (30) days after suspension of benefits, the department shall make strong efforts to arrange a face-to-face

meeting with the parent, including a home visit to the family if necessary.

(B) In the face-to-face meeting, the department shall explain:

- (i) The reason that the family has been found to be noncompliant;
- (ii) The penalty that will be imposed; and
- (iii) The opportunity to correct that noncompliance and avoid the penalty.

(C) The department shall also seek to determine the well-being of the child or children and whether additional services or actions are required to protect the well-being of the child or children.

(D) If the parent comes into compliance within fifteen (15) business days and maintains compliance for two (2) weeks, the suspended benefits shall be paid to the parent.

(E) If the parent fails to come into compliance during the second period of suspended benefits, the family's financial assistance may be reduced by up to fifty percent (50%) for the next three (3) months, if noncompliance continues.

(F) Months during which cash assistance benefits are suspended shall not count toward the family's twenty-four-month limit on receiving Transitional Employment Assistance Program assistance.

(G) The Transitional Employment Assistance Program cash assistance case shall be closed if noncompliance continues after the end of the period under this subdivision (c)(5).

(6) The department shall arrange a home visit with the family during the last month of the sanction to determine the well-being of the child or children and to determine whether additional services are required to protect the well-being of the child or children.

(7) Medicaid and food stamp benefits shall be continued without need for reapplication if the family is being sanctioned and for as long as the family remains eligible under the requirements of those programs.

(8) Department staff may contract with other state agencies, local coalitions, or appropriate community organizations to carry out the strong efforts to communicate with families facing sanction and to conduct the face-to-face meetings and home visits specified in this section.

(d) Beginning after July 27, 2011, the department shall include in the comprehensive annual program report information on the families sanctioned and the outcomes of the home visits to the Governor and the House Committee on Public Health, Welfare, and Labor and the Senate Committee on Public Health, Welfare, and Labor.

(e) When appropriate, protective payees may be designated by the department and may include:

(1) A relative or other individual who is interested in or concerned with the welfare of the child or children and agrees in writing to utilize the assistance in the best interests of the child or children;

(2) A member of the community affiliated with a religious, community, neighborhood, or charitable organization who agrees in writing to utilize the assistance in the best interests of the child or children; or

(3) A volunteer or member of an organization who agrees in writing to utilize the assistance in the best interests of the child or children.

(f)(1) If it is in the best interest of the child or children, as determined by the department, for the staff member of a private agency, a public agency, the department, or any other appropriate organization to serve as a protective payee, the designation may be made.

(2) However, a protective payee shall not be any individual involved in determining eligibility for assistance for the family, staff handling any fiscal pressures related to the issuance of assistance, or landlords, grocers, or vendors of goods, services, or items dealing directly with the recipient.

History. Acts 1939, No. 280, § 21; 1953, No. 177, § 3; 1957, No. 314, § 1; 1965 (1st Ex. Sess.), No. 34, § 2; 1965 (2nd Ex. Sess.), No. 14, § 3; 1967, No. 374, § 3; 1983, No. 780, §§ 1, 2; A.S.A. 1947, §§ 83-127 — 83-127.2; Acts 1997, No. 1058, § 17; 1999, No. 1567, § 15; 2001, No. 1264, § 9; 2005, No. 1705, § 14; 2007, No. 514, § 15; 2011, No. 817, § 3; 2013, No. 1132, §§ 43, 44.

Amendments. The 2013 amendment deleted “Interim” following “Senate” and “House” in (d); and redesignated former (e)(4)(A) and (e)(4)(B) as present (f)(1) and (f)(2).

Cross References. Assigned support rights, §§ 9-14-211 — 9-14-214.

Child Support Enforcement Unit — Employment of attorneys, § 9-14-210.

RESEARCH REFERENCES

Ark. L. Rev. Recent Developments, 45 Ark. L. Rev. 257.

CASE NOTES

Award of Back Payments.

Where the State refused to represent plaintiff in establishing her claims for support payments in arrears and acknowledged that it was not entitled to collect the back payments, the State was estopped from claiming in subsequent proceedings that it was entitled to collect the back payments. Office of Child Sup-

port Enforcement v. Wallace, 328 Ark. 183, 941 S.W.2d 430 (1997).

Cited: Benac v. State, 34 Ark. App. 238, 808 S.W.2d 797 (1991); Guinn v. Guinn, 35 Ark. App. 199, 816 S.W.2d 629 (1991); State Office of Child Support Enforcement v. Harnage, 322 Ark. 461, 910 S.W.2d 207 (1995).

20-76-411. [Repealed.]

Publisher’s Notes. This section, concerning reporting requirements for recipients of transitional employment assistance benefits, failure to appear for

pediatrics screening, and immunization, was repealed by Acts 1999, No. 1567, § 16. The section was derived from Acts 1975, No. 918, § 22; 1997, No. 1058, § 18.

20-76-412. Abandonment — Duties of Department of Human Services.

Whenever any person makes an application for Transitional Employment Assistance Program benefits from the Department of Human Services and the application reveals that the applicant or child or

children was or were put in such needy circumstances as to require public assistance by reason of the fact that the spouse or child or the illegitimate child was deserted or abandoned or left in destitute or necessitant circumstances by willful neglect or refusal to provide for the support or maintenance of the spouse or child by the child's parents, then it shall be the duty of the department to refer that applicant or child or children to the Office of Child Support Enforcement, to attempt to establish the paternity of the child or children, if necessary, and secure support therefor from any person who might owe the child or children a duty of support.

History. Acts 1953, No. 231, § 1; 1983, 1995, No. 1184, § 34; 1997, No. 1058, No. 591, § 1; A.S.A. 1947, § 83-150; Acts § 19.

20-76-413 — 20-76-417. [Repealed.]

Publisher's Notes. These sections, concerning criminal proceedings for parental abandonment, the recovery of payments by the state, and location of parents through state records, were repealed by Acts 1997, No. 1058, § 31. The sections were derived from the following sources:

20-76-413. Acts 1953, No. 231, § 2; A.S.A. 1947, § 83-151.

20-76-414. Acts 1953, No. 231, §§ 3, 4; A.S.A. 1947, §§ 83-152, 83-153.

20-76-415. Acts 1953, No. 231, § 5; A.S.A. 1947, § 83-154.

20-76-416. Acts 1953, No. 231, § 6; A.S.A. 1947, § 83-155.

20-76-417. Acts 1963, No. 28, § 1; A.S.A. 1947, § 83-161.

20-76-418. Foster care — Reduction in long-term care.

(a) It shall be the goal of the State of Arkansas to reduce the number of children who will remain in the Foster Care Program of Title IV-E of the Social Security Act under the appropriate division of the Department of Human Services.

(b) The maximum number of children that can remain in care over twenty-four (24) months cannot exceed fifty-five percent (55%) of all children in the Title IV-E foster care system.

(c) Each fiscal year, it shall be the goal of the State of Arkansas to reduce the maximum number of children in the state who will remain in the Title IV-E foster care system after having been in the care over twenty-four (24) months by three percent (3%) each year.

(d) The appropriate division of the department is directed to develop appropriate plans which describe how the above goals will be achieved.

History. Acts 1981, No. 246, §§ 1-3; Security Act referred to in this section is A.S.A. 1947, §§ 83-175 — 83-175.2. codified as 42 U.S.C. § 670 et seq.

U.S. Code. Title IV-E of the Social

20-76-419. Blind persons generally.

(a) Assistance grants shall be given under this act to any person who:

(1) Has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential;

- (2) Is sixteen (16) years of age or over; and
- (3) Is not receiving any other type of assistance grant.
- (b) The appropriate division of the Department of Human Services shall:

(1) Promulgate rules and regulations, in terms of ophthalmic measurements, to determine the amount of visual acuity which an applicant may have and still be eligible for assistance grants under this act;

(2) Designate a suitable number of ophthalmologists and optometrists, licensed to practice in Arkansas and actively engaged in the practice of their respective professions, to examine applicants and recipients of assistance grants to the blind;

(3) Fix and pay to ophthalmologists and optometrists fees for examination of applicants; and

(4) Develop or cooperate with other agencies in developing measures for the prevention of blindness, the restoration of eyesight, and the vocational adjustment of blind persons.

(c)(1) No applications shall be approved until the applicant has been examined by an ophthalmologist or optometrist, whichever the individual may select, designated or approved by the division to make the examination.

(2) The examining ophthalmologist or optometrist shall certify in writing upon forms provided by the division the findings of the examination.

(3) The recipient shall submit to a reexamination as to his or her eyesight when required to do so by the division.

(d) The amount of the assistance grants shall be determined in accordance with the provisions of § 20-76-407, except that in determining need, the division shall disregard the first eighty-five dollars (\$85.00) per month of earned income, and where earned income has been disregarded in determining the need of a person receiving aid to the blind, the earned income so disregarded shall be disregarded in determining the need of any other individual for old age assistance, aid to the families of dependent children, aid to the blind, and aid to the permanently and totally disabled. The assistance grants shall be in the form of money payments to blind persons in need.

(e) On the basis of the findings of the ophthalmologist's examination as provided for in this act, supplementary services may be provided by the division to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his or her eyesight whether or not he or she is blind as defined in this act or rules and regulations of the division, if he or she is otherwise qualified for assistance grants under this act. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the division.

History. Acts 1939, No. 280, § 22; 34, § 3; 1965 (2nd Ex. Sess.), No. 14, § 4; 1951, No. 308, § 1; 1953, No. 177, § 4; 1967, No. 374, § 4; A.S.A. 1947, § 83-128. 1961, No. 58, § 1; 1961, No. 257, § 1; **Meaning of "this act".** Acts 1939, No. 1963, No. 8, § 1; 1965 (1st Ex. Sess.), No. 280, codified as §§ 9-27-101 [repealed],

20-76-101, 20-76-201, 20-76-204, 20-76-424 [repealed], 20-76-428 [repealed], 20-206 [repealed], 20-76-207, 20-76-401, 20-76-429, 20-76-430 [repealed], 20-76-431 — 20-76-403, 20-76-405, 20-76-406 [repealed], 20-76-433, 20-76-435.
20-76-407 — 20-76-410, 20-76-419, 20-76-

20-76-420. Blind persons — Choice of eye care.

(a) No state official, employee of the Department of Human Services, or official or employee of any county office engaged directly or indirectly in the administration of this act shall preclude, or assist in precluding, any individual from obtaining services for which payment may be made under this act from any ophthalmologist or optometrist licensed to render such services in this state and actively engaged in the practice of their respective professions and shall not, under any circumstances, in informing a person requiring vision care, or for a correction of any vision or muscular anomaly, either directly or indirectly, refer that person to any particular ophthalmologist or optometrist but shall merely advise the person of the need for professional services.

(b) Nothing in this act shall be construed as precluding any individual from obtaining services for which payment may be made under this act from any ophthalmologist or optometrist duly licensed to render the services in this state and actively engaged in the practice of their respective professions.

History. Acts 1965 (2nd Ex. Sess.), No. 14, §§ 8, 9; A.S.A. 1947, §§ 83-128.4, 83-128.5. 406 [repealed], 20-76-410, 20-76-419, 20-76-420, 20-76-424 [repealed], 20-76-427 [repealed], 20-77-102.

Meaning of "this act". Acts 1965 (2nd Ex. Sess.), No. 14, codified as §§ 20-76-
Cross References. Freedom of choice, indigent eye care, § 20-77-506.

20-76-421. Aged and blind persons generally.

(a) The appropriate division of the Department of Human Services is authorized to provide assistance grants to needy aged persons, as authorized in § 20-76-424 [repealed], and assistance grants to needy blind persons, as authorized in § 20-76-419, of up to one hundred twenty-five dollars (\$125) per month in keeping with the federal Social Security Act, and as state funds therefor are available.

(b) It is the intent of this section to be cumulative to the public welfare laws of this state.

History. Acts 1967, No. 19, §§ 1, 2; A.S.A. 1947, §§ 83-128.3, 83-128.3n. referred to in this section is codified primarily in Title 42 of the United States
U.S. Code. The Social Security Act Code.

20-76-422. Aged, blind, and disabled — Conversion from state to federal program.

(a) The Director of the Department of Human Services is authorized to enter into agreements with the United States Secretary of Health and Human Services and other state agencies to effectuate an orderly and timely conversion from state to federal programs of cash assistance

for the aged, blind, and disabled, as provided in Pub. L. No. 92-603, Title III, in such a manner as would be expedient to both the United States Government and the State of Arkansas.

(b) The agreements may include the transfer of state funds to, and the receipt of federal funds from, the secretary for the purposes of supplementing the federal benefits to be paid to eligible persons, to facilitate disability, blindness, and Medicaid eligibility determinations on behalf of the state by the secretary, and to enable the state to perform required administrative or program functions on behalf of the secretary under which the secretary will advance federal funds for the payment of full-time and part-time employees and their related supportive expenses as deemed necessary by both the director and the United States Secretary of Health and Human Services to carry out the conversion plan.

History. Acts 1985, No. 649, § 30; 92-603, referred to in this section, is codified primarily in Title 42 of the U.S. Code.
A.S.A. 1947, § 83-128.6.

U.S. Code. Title III of Pub. L. No.

20-76-423. Aged, blind, and disabled — Supplemental Security Income — Legislative intent.

It was the intent of the Sixty-Ninth General Assembly that on January 1, 1974, and thereafter, the State of Arkansas should provide supplemental payments to its citizens participating in the new supplemental security income program in the amount of mandatory minimum supplements as outlined in Pub. L. No. 92-603 and further explained in the written agreement between the Department of Human Services and the United States Secretary of Health and Human Services.

History. Acts 1985, No. 649, § 29; to in this section, is codified primarily in
A.S.A. 1947, § 83-128.7. Title 42 of the U.S. Code.

U.S. Code. Pub. L. No. 92-603, referred

20-76-424 — 20-76-428. [Repealed.]

Publisher's Notes. These sections, concerning grants to aged persons, including payments for long-term care facilities, medical services, drugs, and permanently and totally disabled persons, and for periodic reconsideration, were repealed by Acts 1997, No. 1058, § 31. The sections were derived from the following sources:

20-76-424. Acts 1939, No. 280, § 20; 1957, No. 117, § 1; 1961, No. 60, § 1; 1963, No. 7, § 1; 1965, No. 66, § 1; 1965 (1st Ex. Sess.), No. 34, § 1; 1965 (2nd Ex. Sess.), No. 14, § 1; 1967, No. 374, § 1; A.S.A. 1947, § 83-126.

20-76-425. Acts 1971, No. 448, § 1; A.S.A. 1947, § 83-166.

20-76-426. Acts 1974 (1st Ex. Sess.), No. 56, §§ 1-3; A.S.A. 1947, §§ 83-163 — 83-165.

20-76-427. Acts 1951, No. 309, § 2; 1961, No. 186, § 1; 1965 (2nd Ex. Sess.), No. 14, § 2; 1967, No. 374, § 2; A.S.A. 1947, § 83-126.1.

20-76-428. Acts 1939, No. 280, § 28; 1953, No. 177, § 6; A.S.A. 1947, § 83-134.

20-76-429. Receipt of additional property or income by assistance recipient.

(a) If at any time during the continuance of assistance the recipient thereof becomes possessed of any property or income in excess of the amount stated in the application for assistance, it shall be the duty of the recipient immediately to notify the county office of the receipt or possession of the property or income. The Department of Human Services may either cancel the assistance or alter the amount thereof in accordance with the circumstances.

(b) Any assistance paid after the recipient has come into the possession of the property or income and in excess of his or her need shall be recoverable by the state as a debt due the state.

History. Acts 1939, No. 280, § 30; A.S.A. 1947, § 83-136; Acts 1997, No. 1058, § 20.

20-76-430. [Repealed.]

Publisher's Notes. This section, prohibiting assignment, garnishment, or attachment of benefits, was repealed by Acts 1997, No. 1058, § 31. The section was derived from Acts 1939, No. 280, § 27; 1941, No. 308, § 1; A.S.A. 1947, §§ 83-133, 83-147.

20-76-431. Transfer of property prohibited.

(a) No person shall, at any time during the continuance of assistance, grant, sell, transfer title, or in any way dispose of any real property without the consent of the appropriate division of the Department of Human Services. If a recipient of assistance executes and delivers a deed to real property without the consent of the division, the transaction shall be deemed prima facie fraudulent as to the division.

(b) To overcome the presumption of fraud, an immediate investigation will be made to determine whether the property was transferred within the rules and regulations of the division. The fair market value of the transferred property shall be considered as available toward meeting the needs of the recipient.

History. Acts 1939, No. 280, § 28; 1953, No. 177, § 6; A.S.A. 1947, § 83-134.

20-76-432. Removal to another county.

(a) Any recipient of assistance who is moved, moves, or is taken to another county in this state shall be required to notify the appropriate division of the Department of Human Services of the removal and may, if otherwise eligible, receive assistance in the county to which he or she has moved.

(b) The office of the county from which he or she has moved shall transfer all necessary records relating to the recipient to the office of the county to which he or she has moved.

History. Acts 1939, No. 280, § 34; A.S.A. 1947, § 83-140; Acts 1997, No. 1058, § 21.

20-76-433. Records — Confidentiality.

(a)(1)(A) Records identifying persons participating in programs administered by the Department of Human Services may be disclosed only as expressly authorized by law or regulation creating or implementing the programs.

(B) The rulemaking power of the department shall include the power to establish and enforce reasonable rules and regulations governing the custody, use, and preservation of the records, papers, files, and departmental communications.

(2)(A)(i) The various executive departments and agencies of the state shall exchange information as necessary for each department and agency to accomplish objectives and fulfill obligations created or imposed by federal or state law.

(ii) The various executive departments and agencies of the state shall execute operating agreements to facilitate the exchanges of information authorized by this chapter.

(B) Information received pursuant to this chapter shall be maintained by persons with a business need to access the information and shall be further disclosed only in accordance with any confidentiality provisions applicable to the department or agency originating the information.

(b) Except for purposes directly connected with the administration of public assistance and in accordance with the rules and regulations of the department, it shall be unlawful for any person or persons to solicit, disclose, receive, make use of, authorize, knowingly permit, participate in, or acquiesce in the use of any list of or names of or any information concerning persons applying for or receiving assistance directly or indirectly derived from the records, papers, files, or communications of the department or acquired in the course of the performance of official duties.

(c) Any person violating the provisions of this section or any rules promulgated under the power hereof shall upon conviction be deemed guilty of a misdemeanor and shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100) or confined in the county jail for not less than ten (10) days nor more than sixty (60) days or shall be subjected to both a fine and jail sentence.

History. Acts 1939, No. 280, § 32; 1941, No. 274, § 6; A.S.A. 1947, § 83-138; Acts 1997, No. 1058, § 22.

RESEARCH REFERENCES

Ark. L. Rev. Watkins, Access to Public Records Under the Arkansas Freedom of Information Act, 37 Ark. L. Rev. 741.

20-76-434. Maintenance of list of recipients.

(a) In order to ensure that the needy citizens of the State of Arkansas are receiving all benefits to which they may be entitled, the Department of Human Services shall maintain a list of all recipients of state assistance reflecting each recipient's income, Social Security number, and the programs in which the recipient is participating.

(b) The information required for the list shall be obtained from the recipient's records and such other sources necessary to ensure accuracy and completeness.

(c) The recipient shall be provided a release form to sign in order to obtain the required information. Failure to sign the release form shall result in termination of the recipient from the program of assistance until a review can be made of the eligibility of the recipient by the department from public records.

History. Acts 1981, No. 934, §§ 30, 31; A.S.A. 1947, §§ 83-124.1, 83-124.2; Acts 1997, No. 208, § 23; 1997, No. 1058, § 23.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as amended by Acts 1997, No. 1058. Former subsection (b) was amended by Acts 1997, No. 208 to read as follows: "(b) No person in the State of Arkansas shall, on the ground of race, color, sex, disability, religion, or national origin, be excluded from participation in or be subjected to discrimination under any program or activity enumerated in this section."

Acts 1997, No. 208, § 1, as reenacted by Acts 2017, No. 255, § 1, provided: "Legislative intent and purpose. The General Assembly hereby acknowledges that many of the laws relating to individuals with disabilities are antiquated, functionally outmoded, derogatory, and ambiguous or are inconsistent with more recently enacted provisions of the law. Consequently, it is the intent of the General Assembly and the purpose of this act to clarify the relevant chapters of Titles 1, 6, 9, 13, 14, 16, 17, 20, 22, 23, and 27 of the Arkansas Code of 1987 Annotated."

20-76-435. No entitlement to assistance.

(a) This chapter shall not be interpreted to entitle any individual or family to assistance under any program created, implemented, or funded under or pursuant to this chapter.

(b) All assistance provided under this chapter shall be subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient shall have any claim for compensation or otherwise by reason of his or her assistance being affected in any way by any amending or repealing act.

History. Acts 1939, No. 280, § 37; A.S.A. 1947, § 83-142; Acts 1997, No. 1058, § 24.

20-76-436. Recovery of benefits from recipients' estates.

(a)(1) Federal or state benefits in cash or in kind, including, but not limited to, Medicaid, Aid to Families with Dependent Children [abolished], Transitional Employment Assistance Program, Temporary Assistance for Needy Families, and food stamps distributed or paid by the Department of Human Services as well as charges levied by the department for services rendered shall upon the death of the recipient constitute a debt to be paid.

(2)(A) The department may make a claim against the estate of a deceased recipient or the interest acquired from the deceased recipient by a grantee of a beneficiary deed under § 18-12-608 for the amount of any benefits distributed or paid or charges levied by the department.

(B) If a grantee of a beneficiary deed under § 18-12-608 makes a written request for a release or disclaimer of the department's interest in the real property described in the beneficiary deed, the department within thirty (30) calendar days of the request shall either:

(i) Make a claim against the interest acquired from the deceased recipient by a grantee of the beneficiary deed; or

(ii) Provide the requested disclaimer and a release suitable for recording in the real estate records of the county where the real property is located.

(b)(1) The department shall not seek recovery against the estate of a deceased recipient or the interest acquired from the deceased recipient by a grantee of a beneficiary deed under § 18-12-608 for the amount of any benefits distributed or paid or charges levied if the recovery is not cost effective or if the recovery works an undue hardship on the heirs or devisees of the decedent's estate or the grantee of a beneficiary deed under § 18-12-608.

(2) In determining the existence of an undue hardship, the department shall consider factors including, but not limited to, the following:

(A) The asset subject to recovery is the sole income-producing asset of the beneficiaries of the estate or the grantee of a beneficiary deed under § 18-12-608;

(B) Without receipt of the beneficiary deed or proceeds of the estate, a grantee or beneficiary would become eligible for federal or state benefits;

(C) Allowing a grantee of a beneficiary deed under § 18-12-608 to receive the interest under the beneficiary deed or a beneficiary to receive the inheritance from the estate would enable the grantee or beneficiary to discontinue eligibility for federal or state benefits;

(D) The asset subject to recovery is a home with a value of fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the deceased recipient's death; or

(E) There are other compelling circumstances.

(c) To the extent that there is any conflict between the preceding criteria and the standards that may be specified by the United States Secretary of Health and Human Services, the federal standards shall prevail.

(d) Applicants for federal or state benefits shall be notified in writing in prominent type on the application form that the department may make a claim against their estate or the interest acquired from the applicant by a grantee of a beneficiary deed under § 18-12-608.

History. Acts 1993, No. 415, § 1; 1997, No. 957, § 1; 1997, No. 1058, § 25; 2001, No. 1480, § 1; 2007, No. 243, § 2.

CASE NOTES

ANALYSIS

Applicability.
Duty to Inform.
Estoppel.
Jurisdiction.

Applicability.

This section creates a new right, is not remedial, and thus, cannot be applied retroactively. *Estate of Wood v. Ark. Dep't of Human Servs.*, 319 Ark. 697, 894 S.W.2d 573 (1995).

Duty to Inform.

This section does not impose upon the department a duty to inform Medicaid recipients of its right to file claims against their estates for benefits paid. *Ark. Dep't of Human Servs. v. Estate of Lewis*, 325 Ark. 20, 922 S.W.2d 712 (1996) (decision under prior law).

Where the Probate Court allowed a claim against decedent's estate for an amount which represented Medicaid nursing home payments made between

December 26, 1991, and October 4, 1993, the award constituted an improper, retroactive application of this section. *Estate of Wood v. Ark. Dep't of Human Servs.*, 319 Ark. 697, 894 S.W.2d 573 (1995).

Estoppel.

The department is estopped from asserting a claim against a recipient's estate only where the recipient relied upon affirmative misrepresentations made by the department and not where the department was silent regarding its right to recoup benefits. *Ark. Dep't of Human Servs. v. Estate of Lewis*, 325 Ark. 20, 922 S.W.2d 712 (1996).

Jurisdiction.

This section creates a debt upon the death of the recipient which may be asserted as a claim against the estate; the Probate Court has jurisdiction over such a claim pursuant to § 28-50-105(a)(4). *Estate of Wood v. Ark. Dep't of Human Servs.*, 319 Ark. 697, 894 S.W.2d 573 (1995).

20-76-437. Reporting — Transitional employment assistance.

The Department of Human Services, the Department of Workforce Services, the Department of Health, the Department of Education, the Department of Higher Education, the Department of Career Education, the Arkansas Development Finance Authority, the Arkansas Economic Development Council, and the Arkansas Department of Transportation shall report periodically to the House Committee on Public Health, Welfare, and Labor and Senate Committee on Public Health, Welfare, and Labor regarding the provision of services to Transitional Employment Assistance Program recipients.

History. Acts 1997, No. 1058, § 17; substituted “Department of Transportation” for “State Highway and Transportation Department”.
1999, No. 1567, § 17; 2017, No. 707, § 65.

Amendments. The 2017 amendment

20-76-438. Purpose.

(a)(1) The General Assembly finds that it is important that all families in this state be strong and economically self-sufficient and that it is in the public interest that:

(A) Eligible persons and families of lesser means be given time-limited cash assistance along with an opportunity to obtain and retain employment that is sufficient to sustain their families;

(B) As a part of this transition from welfare to work, it is in the public’s interest that various supportive services and, in some cases, education and training be offered to these families to enable them to make this transition;

(C) Education and training are essential to long-term career development and self-sufficiency; and

(D) Employment improves the quality of life for parents and children by increasing family income and assets and by improving self-esteem.

(2) Therefore, it is in the public interest that our state provide time-limited cash assistance and supportive services to our most vulnerable citizens and their children.

(b)(1) The General Assembly also finds that:

(A) Currently there are inefficiencies and duplication of effort on the part of the Department of Workforce Services and the Department of Human Services in the administration of the Transitional Employment Assistance Program; and

(B) A different division of responsibility for administration of the Transitional Employment Assistance Program by the Department of Workforce Services and the Department of Human Services may result in the more efficient and effective administration of the Transitional Employment Assistance Program.

(2) Therefore, it is in the public interest that the General Assembly authorize the Department of Workforce Services to:

(A) Receive the Temporary Assistance for Needy Families block grant from the United States Department of Health and Human Services for the administration of all Temporary Assistance for Needy Families-funded programs in Arkansas;

(B) Expend the Temporary Assistance for Needy Families block grant funds subject to the appropriations of the General Assembly;

(C) Provide all employment-related services for time-limited Transitional Employment Assistance Program clients;

(D) Contract with other state agencies or other providers to deliver services in Temporary Assistance for Needy Families-funded programs; and

(E) Prepare and submit any Temporary Assistance for Needy Families renewal plans that are required in § 402 of the Social Security Act, 42 U.S.C. § 651 et seq.

History. Acts 1999, No. 1567, § 1; 2005, No. 1705, § 15; 2007, No. 514, § 16; 2009, No. 952, § 14; 2013, No. 1132, § 45.

U.S. Code. Section 402 of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 602.

Amendments. The 2013 amendment deleted (b)(2)(E) and redesignated former (b)(2)(F) as present (b)(2)(E).

20-76-439. Self-sufficiency — Assessments, personal responsibility agreements, and supportive services.

(a)(1) At the time of application for transitional employment assistance, the Department of Human Services and the applicant shall sign a personal responsibility agreement.

(2) An applicant shall not be required to engage in job search activities if the applicant does not have available childcare and transportation services.

(b)(1) Within thirty (30) calendar days after an application for transitional employment assistance has been approved, the department shall conduct an in-depth assessment of the functional educational level, skills, prior work experience, and employability of the participant.

(2) The department shall utilize testing instruments which shall yield education levels, skill levels, work readiness, and employability of the participant.

(3)(A) The assessment shall identify barriers to immediate employment as well as barriers that may prevent the participant from increasing his or her long-term earnings and from taking advantage of opportunities for employment advancement.

(B) The barriers to be assessed shall include, at least, domestic violence, substance abuse, learning disabilities, and unmet client needs for supportive services such as child care, transportation, assistance with job-related expenses, housing, health care, job readiness preparation, and education and training.

(c) The department shall inform the participant of supportive services that may be available to alleviate barriers to employment and increase long-term earnings and opportunities for employment advancement.

(d) After the skills assessment has been completed and the participant has been informed about the availability of supportive services, the department shall work with the participant to develop an individual employment plan that:

(1) Sets forth an employment goal for the participant and a plan for moving the participant into employment;

(2) Is designed to the greatest extent possible to move the participant into employment, help the participant maintain employment, and increase the participant's long-term earnings and opportunities for employment advancement;

(3) Makes education and training a priority of allowable work activities, subject to federal work participation requirements and taking into account the caseload reduction credit, when the assessment

warrants that education and training are the best means to achieving long-term economic self-sufficiency;

(4) Lists the supportive services that are generally available under the program and the methods by which a participant may access these services;

(5) Describes the services the department shall provide to enable participants to obtain and maintain employment and increase their potential long-term earnings and opportunities for employment advancement; and

(6) Designates the number of hours that he or she must participate in work activities to meet participation standards, unless the participant is deemed by the department to be exempt or temporarily deferred from work participation requirements.

(e)(1) The department shall review the progress of the participant in the program and meet with the participant as necessary to review and revise his or her employability plan.

(2) The department shall inform the participant of his or her time remaining on the lifetime limit on financial assistance and shall reassess the client's needs for supportive services.

(f) The department may develop and promulgate regulations requiring program applicants who have been determined to be job-ready to engage in job search activities while the application is being processed.

(g) The department shall not require an applicant to engage in job search activities if, in the judgment of the department, the applicant has one (1) or more barriers which if not addressed would prevent the applicant from finding employment.

(h)(1) Before requiring the applicant to engage in job search activities, the department shall ask the applicant whether childcare or transportation assistance, or both, will be needed to complete job search activities.

(2) If needed child care and transportation are not available, the applicant shall not be required to engage in job search activities as a condition of application approval.

History. Acts 1999, No. 1567, § 18; 2007, No. 514, § 17.

20-76-440. [Repealed.]

Publisher's Notes. This section, concerning transitional employment assistance monitoring systems, was repealed

by Acts 2001, No. 1264, § 10. The section was derived from Acts 1999, No. 1567, § 19.

20-76-441, 20-76-442. [Repealed.]

Publisher's Notes. These sections, concerning transitional employment as-

sistance postemployment information and referral program and customer service re-

view program, were repealed by Acts 20-76-442. Acts 1999, No. 1567, § 21; 2007, No. 514, § 18. The sections were 2005, No. 1705, § 17.
derived from the following sources:

20-76-441. Acts 1999, No. 1567, § 20;
2005, No. 1705, § 16.

20-76-443. Education and training.

(a)(1) The Department of Human Services and the Department of Workforce Services shall permit Transitional Employment Assistance Program recipients to obtain the education and training they need to obtain jobs that pay wages allowing them to be economically self-sufficient.

(2) Program recipients who are assessed as having basic education deficiencies shall be allowed to combine educational activities leading to a high school diploma or high school equivalency diploma approved by the Department of Career Education and employment and work experience. Participants may be required to engage in internships, work experience, or employment. Work requirements shall not exceed fifteen (15) hours per week unless the Department of Human Services certifies that allowing education to count toward Transitional Employment Assistance Program recipients' required work activities would affect the state's ability to meet federal work participation rates. To the extent possible, educational activities shall take place in a work context.

(3)(A) Qualified Transitional Employment Assistance Program recipients shall be allowed to enroll in vocational education courses designed to prepare them for jobs in high-growth, high-wage occupations.

(B) As long as the recipient's coursework, including study time, exceeds the minimum number of work activity hours required to count toward federal work participation rates, this activity alone shall satisfy the recipient's required work activity.

(C)(i) If a recipient's coursework, including study time, does not exceed the minimum number of work activity hours required to count toward federal work participation rates, the recipient may be required to engage in internships or work experience related to the course of study.

(ii) However, the combination of work activities and the recipient's coursework shall not exceed the minimum number of work activity hours required to count toward federal work participation rates.

(D)(i) The Department of Human Services may suspend the allowance to enroll only if the Arkansas Workforce Development Board certifies that allowing education to count toward a Transitional Employment Assistance Program recipient's required work activities would affect the state's ability to meet federal work participation rates.

(ii) Upon certification, the Department of Human Services may require all recipients to engage in work activities for the number of hours required to count toward the federal work participation rates.

(4)(A) Qualified Transitional Employment Assistance Program recipients shall be allowed to enroll in postsecondary courses leading to a two-year or four-year degree or a five-year teaching degree.

(B) As long as the recipient's coursework, including study time, exceeds the minimum number of work activity hours required to count toward federal work participation rates, this activity alone shall satisfy the recipient's required work activity.

(C)(i) If a recipient's coursework does not exceed the minimum number of work activity hours required to count toward federal work participation rates, the recipient may be required to engage in internships or work experience related to the course of study.

(ii) However, the combination of work activities and the recipient's coursework shall not exceed the minimum number of work activity hours required to count toward federal work participation rates.

(D)(i) The Department of Human Services may suspend the allowance to enroll only if the board certifies that allowing education to count toward a program recipient's required work activities would affect the state's ability to meet federal work participation rates.

(ii) Upon certification, the Department of Human Services may require all recipients to engage in work activities for the number of hours required to count toward the federal work participation rates.

(5) Participants under each of these options shall be provided the supportive services they need to attend classes and other educational activities, including, at least, child care and transportation.

(b) Transitional Employment Assistance Program recipients shall be assigned to work activities that prepare them for long-term economic self-sufficiency, including basic, vocational, and postsecondary education when appropriate.

(c) Participation in combined work and education activities shall be deemed to meet Transitional Employment Assistance Program recipients' work activity requirements. The Department of Human Services may require additional or fewer hours of federally defined work activities if it certifies that the state may not meet federal work participation rates after taking into account the caseload reduction credit because recipients enrolled in educational courses are not required to engage in federally defined work activities for the minimum number of hours.

(d)(1) For a qualified Transitional Employment Assistance Program recipient enrolled in a two-year college, the education program created in this section shall pay for child care for the recipient's children for both day and evening classes.

(2) The Department of Workforce Services and the Arkansas Early Childhood Commission jointly shall promulgate rules to develop an evening childcare program with extended hours under subdivision (d)(1) of this section.

History. Acts 1999, No. 1567, § 22; 2003, No. 1306, § 6; 2005, No. 1705, § 18; 2007, No. 514, §§ 19, 20; 2009, No. 1485, § 1; 2013, No. 1132, § 46; 2015, No. 1115, § 28.

A.C.R.C. Notes. The Temporary Assistance for Needy Families Oversight Board was abolished via repeal in Acts 2015, No. 907, § 8, and replaced by the Arkansas Workforce Development Board by Act 907.

Amendments. The 2013 amendment substituted “Temporary Assistance for Needy Families Oversight Board” for “board” in (a)(3)(D)(i).

The 2015 amendment substituted “high school equivalency diploma approved by the Department of Career Education” for “general educational development certificate” in the first sentence in (a)(2).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Public Health and Welfare, Tran-

sitional Employment Assistance Program, 26 U. Ark. Little Rock L. Rev. 466.

20-76-444. Arkansas Work Pays Program — Created — Duties.

(a)(1) There is created the Arkansas Work Pays Program.

(2)(A) The Arkansas Work Pays Program shall be administered by the Department of Workforce Services.

(B) The administration of the Arkansas Work Pays Program shall focus on promoting the Transitional Employment Assistant Program outcomes specified in § 20-76-113.

(3) Eligible applicants to the Arkansas Work Pays Program shall receive one (1) or more of the following:

- (A) Cash assistance;
- (B) Support services;
- (C) Medical assistance; and
- (D) Employment assistance.

(b)(1) Eligibility for assistance under the Arkansas Work Pays Program is limited to applicants or participants who:

(A) Have care and custody of a related minor child;

(B) Reside in the State of Arkansas at the time of application for assistance and during the period of assistance;

(C) Apply for Arkansas Work Pays Program assistance within six (6) months of leaving the Transitional Employment Assistance Program after at least three (3) months of Transitional Employment Assistance Program assistance;

(D) Have not received more than twenty-four (24) months of Arkansas Work Pays Program benefits;

(E) Were engaged:

(i) In paid work activities for a minimum of twenty-four (24) hours per week and met the federal work participation requirement for the past month; or

(ii) In the case of continuing eligibility, in paid work activities for a minimum of twenty-four (24) hours per week and met the federal work participation requirement for one (1) of the past three (3) months and for at least three (3) of the past six (6) months;

(F) Are:

- (i) Citizens of the United States;
- (ii) Qualified aliens lawfully present in the United States before August 22, 1996;
- (iii) Qualified aliens who physically entered the United States on or after August 22, 1996, and have been in qualified immigrant status for at least five (5) years; or
- (iv) Aliens to whom benefits under Temporary Assistance for Needy Families must be provided under federal law;
- (G) Have income below one hundred fifty percent (150%) of the federal poverty level; and
- (H) Sign and comply with a personal responsibility agreement.

(2) Families who leave the Arkansas Work Pays Program due to insufficient work hours may reenter the Arkansas Work Pays Program once they establish that they were paid work activities for a minimum of twenty-four (24) hours per week and met the federal work participation requirement for the past month.

(c)(1) Families participating in the Arkansas Work Pays Program with earnings less than the federal poverty level shall receive monthly cash assistance equal to the maximum monthly Transitional Employment Assistance Program benefit for a family of three (3) with no earned income.

(2) The department may set payment levels for families earning above the federal poverty level by rule to allow for a gradual reduction in payments as earnings rise toward one hundred fifty percent (150%) of the federal poverty level.

(d)(1) Enrollment in Arkansas Work Pays Program cash assistance may be limited to three thousand (3,000) participants.

(2) If the Arkansas Workforce Development Board certifies to the Governor and the Chief Fiscal Officer of the State and notifies the Legislative Council, the Senate Committee on Public Health, Welfare, and Labor, and the House Committee on Public Health, Welfare, and Labor that the action is necessary to avoid the number of families receiving Arkansas Work Pays Program cash assistance going over three thousand (3,000), it may authorize a reduction of the months for which families may receive cash assistance or other supportive services.

(3) The number of months for which families are eligible for cash assistance may be reduced in three-month increments from the statutory provision of twenty-four (24) months.

(4) Families who lose eligibility for cash assistance due to the reduction in the number of months of eligibility shall qualify for financial incentives offered to families leaving the Arkansas Work Pays Program.

(5) The board shall withdraw its reduction of the months for which families are eligible for cash assistance if the reduction is no longer necessary to maintain enrollments below three thousand (3,000) families.

(e) Families participating in the Arkansas Work Pays Program shall be eligible for the same support services and assistance as families enrolled in the Transitional Employment Assistance Program.

(f) The Department of Workforce Services shall administer a work incentive program that includes cash bonuses and other financial incentives to encourage:

(1) Transitional Employment Assistance Program recipients to leave the Transitional Employment Assistance Program and move into the Arkansas Work Pays Program;

(2) Arkansas Work Pays Program participants to stay employed for at least twenty-four (24) hours a week and meet the federal work participation rate; and

(3) Arkansas Work Pays Program participants to leave the Arkansas Work Pays Program and continue employment for at least twenty-four (24) hours per week.

(g)(1) The Department of Workforce Services shall work with local workforce offices to develop and administer services to Arkansas Work Pays Program participants designed to help them move into higher-paying jobs available in their regions.

(2) These services may include:

(A) Employment exchanges;

(B) Education and training;

(C) Work supports; and

(D) Other services designed to help Arkansas Work Pays Program participants increase their earnings and develop careers.

(3) The Department of Workforce Services may make these services available to low-income workers who are not participating in the Arkansas Work Pays Program.

(h) The Department of Workforce Services may contract with the Department of Human Services for administrative services related to eligibility and payments.

(i) The Department of Workforce Services shall make arrangements with the Department of Human Services to facilitate participants' enrollment in the Arkansas Work Pays Program after they leave the Transitional Employment Assistance Program.

(j)(1) The Department of Workforce Services shall promulgate rules establishing the Arkansas Work Pays Program.

(2) The rules shall be subject to review and recommendation by the board.

History. Acts 2005, No. 1705, § 19; 2007, No. 514, §§ 21, 22; 2009, No. 952, § 15.

A.C.R.C. Notes. The Temporary Assis-

tance for Needy Families Oversight Board was abolished via repeal in Acts 2015, No. 907, § 8, and replaced by the Arkansas Workforce Development Board by Act 907.

20-76-445. Career Pathways Initiative — Findings.

(a) The General Assembly finds that:

(1) Higher education credentials are:

(A) Becoming increasingly important for the State of Arkansas to maintain a competitive workforce; and

(B) Critical for adults to qualify and obtain high-wage employment; and

(2) It is in the public interest that:

(A) Individuals improve their education credentials in order to qualify for higher-wage jobs;

(B) Eligible persons have access to postsecondary education programs that meet the specific needs of working adults;

(C) Institutions of higher education offer programs targeted to the specific workforce needs of their area within the state; and

(D) Our state provide services aimed at improving employment prospects for low-income adults.

(b)(1)(A) The Department of Workforce Services, the Department of Higher Education, and the Arkansas Workforce Development Board shall work jointly to develop a plan for the Career Pathways Initiative.

(B) The plan shall be updated annually.

(2) The initiative shall:

(A) Increase the access of low-income parents and other individuals to education credentials that qualify them for higher-paying jobs in their local areas;

(B) Improve the preparedness of the Arkansas workforce for high-skill and high-wage jobs;

(C) Develop training courses and educational credentials after consulting local employers and local workforce boards to identify appropriate job opportunities and needed skills and training to meet employers' needs;

(D) Provide resources on the basis of performance incentives, including participants:

(i) Enrolling in courses;

(ii) Completing the courses;

(iii) Obtaining jobs in the targeted job categories; and

(iv) Staying employed in the targeted job categories;

(E) Use available Temporary Assistance for Needy Families funds for participants who have custody or legal responsibility for a child under twenty-one (21) years of age and whose family income is less than two hundred fifty percent (250%) of the federal poverty level; and

(F) Incorporate the existing Career Pathways Program.

(c) The initiative plan shall be subject to review, recommendation, and approval by the Arkansas Workforce Development Board.

(d) Under the initiative, the Department of Higher Education shall contract to provide education and training that will result in job training certificates or higher education degrees for Transitional Employment Assistance Program participants and other low-income adults with:

(1) State agencies;

(2) Two-year colleges;

(3) Local governments; or

(4) Private or community organizations.

(e)(1) The initiative plan shall specify procedures and requirements for applications for entry into programs under subsection (d) of this section.

(2) Applications shall be made to the Department of Higher Education.

(f) The Department of Higher Education shall determine which two-year college proposals are funded under the initiative.

(g) Temporary Assistance for Needy Families funds may be combined with other federal, state, and local funds in ways consistent with federal laws and regulations.

History. Acts 2005, No. 1705, § 19; 2007, No. 514, § 23; 2015, No. 907, § 12.

A.C.R.C. Notes. The Temporary Assistance for Needy Families Oversight Board was abolished via repeal in Acts 2015, No. 907, § 8, and replaced by the Arkansas

Workforce Development Board by Act 907.

Amendments. The 2015 amendment substituted “Arkansas Workforce Development Board” for “Arkansas Workforce Investment Board” in (b)(1)(A).

20-76-446. Community Investment Initiative.

(a)(1) There is created the Community Investment Initiative.

(2) The Department of Workforce Services shall develop the initiative.

(b) The department shall contract with private or community organizations, including faith-based organizations, to offer services and support to parents, children, and youth in their communities.

(c) The initiative may fund programs for the following purposes:

(1) Improving outcomes for youth, including, but not limited to:

(A) Academic achievement;

(B) Job skills;

(C) Civic participation and community involvement; and

(D) Reducing risky behaviors such as sexual activities, drug use, and criminal behavior;

(2) Improving parenting and family functioning through services and support to parents, children, and to families;

(3) Improving marriage and relationship skills among youth and engaged and married couples;

(4) Improving the financial and emotional connections of noncustodial parents to their children through fatherhood programs;

(5) Improving the employment skills and family connections of parents who leave state jails and prisons;

(6) Providing supportive services to child-only cases in the Transitional Employment Assistance Program; and

(7) Other purposes allowable under the federal Temporary Assistance for Needy Families program.

(d)(1) The department shall authorize contracts with state agencies or community organizations to provide training and capacity building services to organizations eligible to apply for initiative funds.

(2) Contracts may be let for the following purposes:

- (A) Assisting in the development of proposals to be funded through the initiative;
- (B) Preparing organizations for the fiscal responsibilities involved in receiving and spending state and federal funds; and
- (C) Improving the provision of services by contractors receiving funds from the initiative.
- (e) Use of Temporary Assistance for Needy Families Program funds shall be subject to appropriations by the General Assembly for the initiative.
- (f) Contracts shall include performance-based payments keyed to participation in services and specified outcomes.
- (g) Temporary Assistance for Needy Families Program funds may be combined with other state, federal, and other funds in ways consistent with federal laws and rules.

History. Acts 2005, No. 1705, § 19;
2007, No. 514, § 24.

SUBCHAPTER 5 — ARKANSAS Rx PROGRAM

SECTION.
20-76-501 — 20-76-515. [Repealed.]

20-76-501 — 20-76-515. [Repealed.]

Publisher’s Notes. This subchapter, concerning the Arkansas Rx Program, was repealed by Acts 2013, No. 1145, § 5. The subchapter was derived from the following sources:

20-76-501. 2005, No. 538, § 1.	20-76-506. 2005, No. 538, § 1.
20-76-502. 2005, No. 538, § 1.	20-76-507. 2005, No. 538, § 1.
20-76-503. 2005, No. 538, § 1.	20-76-508. 2005, No. 538, § 1.
20-76-504. 2005, No. 538, § 1.	20-76-509. 2005, No. 538, § 1.
20-76-505. 2005, No. 538, § 1.	20-76-510. 2005, No. 538, § 1.
	20-76-511. 2005, No. 538, § 1.
	20-76-512. 2005, No. 538, § 1.
	20-76-513. 2005, No. 538, § 1.
	20-76-514. 2005, No. 538, § 1.
	20-76-515. 2005, No. 538, § 1.

SUBCHAPTER 6 — COMMUNITY SERVICES OVERSIGHT AND PLANNING COUNCIL

SECTION.
20-76-601 — 20-76-603. [Repealed.]

20-76-601 — 20-76-603. [Repealed.]

Publisher’s Notes. This subchapter, concerning the Community Services Oversight and Planning Council, was repealed by identical Acts 2016 (3rd Ex. Sess.), Nos. 2 and 3, § 49. The subchapter was derived from the following sources:

20-76-601. Acts 2005, No. 1670, § 1.
20-76-602. Acts 2005, No. 1670, § 1.
20-76-603. Acts 2005, No. 1670, § 1.

SUBCHAPTER 7 — DRUG SCREENING AND TESTING ACT OF 2015

SECTION.

- 20-76-701. Title.
- 20-76-702. Definitions.
- 20-76-703. Administration.
- 20-76-704. Powers and duties.
- 20-76-705. Standards in drug screening and testing pilot program.

SECTION.

- 20-76-706. Information regarding drug testing.
- 20-76-707. Positive drug test result not a disability.
- 20-76-708. Rulemaking authority.
- 20-76-709. Effective date.

Effective Dates. Identical Acts 2015 (1st Ex. Sess.), Nos. 2 and 3, § 3: July 22, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act is essential to the public interest and operation of the state; that the acts at issue contain inadvertent engrossment errors; and that this act is necessary to

correct the engrossment errors in order to avoid the potential confusion that may result if the engrossment errors are not corrected. Therefore, an emergency is declared to exist, and this act, being necessary for the preservation of the public peace, health, and safety, shall become effective on July 22, 2015.”

20-76-701. Title.

This act shall be known and may be cited as the “Drug Screening and Testing Act of 2015”.

History. Acts 2015, No. 1205, § 1.

20-76-702. Definitions.

As used in this subchapter:

(1) “Caretaker relative” means any of the following individuals living with a minor child:

- (A) A parent or stepparent;
- (B) A grandparent;
- (C) A sibling, half-sibling, or stepsibling;
- (D) An aunt or uncle of any degree;
- (E) A first cousin, nephew, or niece; and
- (F) A relative by adoption within the previously named classes;

(2) “Chain of custody” means the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all materials or substances, providing accountability at each stage in handling, testing, and storing specimens and reporting test results;

(3) “Confirmation test” means a second analytical procedure used to identify the presence of a specific drug or drug metabolite in a specimen, which test may be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy;

(4)(A) “Drug” means marijuana, cocaine, methamphetamine, amphetamine, and opiates, including without limitation morphine.

(B) The Director of the Department of Workforce Services may add under the definition of subdivision (4)(A) of this section additional drugs by rule;

(5) “Drug test” means any chemical, biological, or physical instrumental analysis administered by a drug testing agency authorized to test under this subchapter for the purpose of determining the presence or absence of a drug or its metabolites;

(6) “Drug testing agency” means an entity that has the required credentials as established by the Department of Workforce Services to administer drug tests using a person’s urine, blood, or DNA that will detect and validate the presence of drugs in a person’s body;

(7) “Drug treatment program” means a service provider that provides confidential, timely, and expert identification, assessment, and resolution of drug or alcohol abuse problems affecting a person;

(8) “Five-panel drug test” means a test for marijuana, cocaine, methamphetamine, amphetamine, and opiates, including without limitation morphine;

(9) “Protective payee” means a caretaker relative or legal guardian of a minor child unless the caretaker relative who is an applicant for Temporary Assistance for Needy Families Program benefits receives a positive result on a drug test; and

(10) “Specimen” means tissue, fluid, or a product of the human body capable of revealing the presence of drugs or drug metabolites.

History. Acts 2015, No. 1205, § 1; 2015 (1st Ex. Sess.), No. 2, § 2; 2015 (1st Ex. Sess.), No. 3, § 2.

amendment by identical acts Nos. 2 and 3 inserted (1)(A) through (1)(F) and (2) through (8).

Amendments. The 2015 (1st Ex. Sess.)

20-76-703. Administration.

(a)(1) Subject to state appropriation, the Department of Workforce Services, in coordination with the Department of Human Services, shall establish and administer a drug screening and testing program of suspicion-based drug screening and testing for each applicant who is otherwise eligible for the Temporary Assistance for Needy Families Program, § 20-76-101 et seq., or its successor program and for each recipient of the Temporary Assistance for Needy Families Program, § 20-76-101 et seq., or its successor program.

(2) The drug screening and testing program shall include the population statewide.

(b)(1) A dependent child under eighteen (18) years of age is exempt from the drug screening and testing requirement unless the dependent child is a parent who is also an applicant for the Temporary Assistance for Needy Families Program and who does not live with a parent, legal guardian, or other adult caretaker relative.

(2) An entity or individual participating in the Career Pathways Initiative or Community Investment Initiative under the Temporary Assistance for Needy Families Program is exempt from the drug screening and testing requirement.

(c)(1) An applicant or recipient may inform the drug testing agency administering the test of any prescription or over-the-counter medication that the individual is taking.

(2) An applicant or recipient shall not be denied Temporary Assistance for Needy Families Program benefits on the basis of failing a drug test if the applicant has a current and valid prescription or a written certification and a registry identification card issued under the Arkansas Medical Marijuana Amendment of 2016, Arkansas Constitution, Amendment 98, for the drug in question.

(d)(1) An applicant or recipient shall undergo a confirmation test using the same specimen sample from the initial positive test before receiving Temporary Assistance for Needy Families Program benefits.

(2) The results of the confirmation test shall be used to determine final eligibility for Temporary Assistance for Needy Families Program benefits.

History. Acts 2015, No. 1205, § 1; 2017, No. 314, §§ 1-3.

Amendments. The 2017 amendment, in (a)(1), inserted "in coordination with the Department of Human Services" and substituted "administer a drug screening and testing program" for "administer a two-year pilot program"; in (a)(2), substituted "The drug screening and testing program" for "The pilot program" and de-

leted "as determined by the department and all applicants and all recipients in the counties bordering the following states" at the end; deleted (a)(2)(A) – (a)(2)(E); inserted "or a written certification and a registry identification card issued under Arkansas Constitution, Amendment 98" in (c)(2); and substituted "same specimen" for "same urine" in (d)(1).

20-76-704. Powers and duties.

(a) The Department of Workforce Services, in coordination with the Department of Human Services, shall:

(1) Consult with substance abuse treatment experts;

(2) Develop appropriate screening techniques and processes to establish reasonable cause that an applicant or recipient is using a drug and to establish the necessary criteria to permit the Department of Workforce Services, in coordination with the Department of Human Services, to require the applicant or recipient to undergo no less than a five-panel drug test;

(3) Identify and select a screening tool as a part of the development of the screening technique that will be employed for the drug screening and testing program under this subchapter;

(4) Develop a plan for funding of the costs of the screening process, the no less than five-panel drug testing process, personnel and information systems modification, and other costs associated with the development and implementation of the testing process; and

(5) Develop a plan for any modification of its information systems necessary to properly track and report the status of applicants or recipients who are screened and who must undergo testing as required by this subchapter, including without limitation a detailed analysis of costs for systems analysis, programming, and testing of modifications and for implementation dates for completion of the modifications.

(b) Annually, the Department of Workforce Services, in coordination with the Department of Human Services, shall submit a report of the past calendar year on or before February 1 to the General Assembly that includes without limitation:

- (1) The number of individuals screened;
- (2) The number of screened individuals for whom there was a reasonable suspicion of illegal drug use;
- (3) The number of screened individuals who took a drug test;
- (4) The number of screened individuals who refused to take a drug test;
- (5) The number of screened individuals who received a positive result on the drug test;
- (6) The number of screened individuals who received a negative result on the drug test;
- (7) The number of individuals who received a positive result on a drug test for a second or subsequent time;
- (8) The amount of costs incurred by the department for the administration of the drug screening and testing program; and
- (9) The number of applications and re-applications received for the Temporary Assistance for Needy Families Program, § 20-76-101 et seq., in the previous year and the current year.

History. Acts 2015, No. 1205, § 1; 2017, No. 314, §§ 4-6.

Amendments. The 2017 amendment inserted “in coordination with the Department of Human Services” in the introductory language of (a); in (a)(2), substituted “Department of Workforce Services, in coordination with the Department of Human Services” for “department” and “no less than a five-panel drug test” for “a urine-based five-panel drug test”; substituted “drug screening and testing program” for “pilot program” in (a)(3); substi-

tuted “no less than” for “urine-based” in (a)(4); in the introductory language of (b), substituted “Annually, the Department of Workforce Services, in coordination with the Department of Human Services” for “Upon conclusion of the first year of the pilot program and conclusion of the pilot program, the department”, inserted “of the past calendar year”, and substituted “February 1” for “December 31”; substituted “drug screening and testing” for “pilot” in (b)(8); and added (b)(9).

20-76-705. Standards in drug screening and testing pilot program.

The drug screening and testing program shall include without limitation:

(1)(A) A requirement that an applicant upon initial application for Temporary Assistance for Needy Families Program benefits or a current recipient of program benefits at annual redetermination shall be screened using an empirically validated drug screening tool.

(B) If the result of the drug screening tool gives the Department of Workforce Services a reasonable suspicion to believe that the applicant or recipient has engaged in the use of drugs, then the applicant or recipient shall be required to take a drug test.

(C) A refusal by an applicant or recipient to take a drug test shall result in lack of eligibility for program benefits for six (6) months;

(2) A process for administering the cost of drug tests as follows:

(A) If an applicant or recipient receives a negative result on a drug test, the cost of administering the drug test shall be paid by the department;

(B) If an applicant or recipient receives a positive result on a drug test, refuses to enter a treatment plan, and receives a negative result on a drug test upon reapplying for benefits after six (6) months, the cost of administering the first drug test shall be deducted from his or her first program benefits, and the cost of administering the second drug test shall be paid by the department;

(C) If an applicant receives a positive result on a drug test and enters a treatment plan, the cost of administering the drug test shall be deducted from his or her first program benefits; and

(D) If a recipient receives a positive result on a drug test and enters a treatment plan, the cost of administering the drug test shall be deducted from his or her first program benefits after redetermination;

(3)(A) A referral process for any applicant or recipient who receives a positive result on a drug test to be referred to an appropriate treatment resource for drug abuse treatment or other resource by the department for an appropriate treatment period as determined by the department.

(B) Evidence of ongoing compliance during the determined treatment period shall be required.

(C) If an applicant or recipient is otherwise eligible during the treatment period, the applicant shall receive program benefits;

(4) A requirement that a refusal to enter a treatment plan or failure to complete the treatment plan by an applicant or recipient who receives a positive result on a drug test shall result in lack of eligibility for program benefits for six (6) months;

(5)(A) A requirement that an applicant or recipient be tested using the no less than five-panel drug test upon the conclusion of the determined treatment period.

(B) If an applicant or recipient receives a positive result on the no less than five-panel drug test or any subsequent drug test, the applicant shall be ineligible for program benefits for six (6) months.

(C) If an applicant or recipient who has failed a drug test reapplies for program benefits, the applicant or recipient shall test negative for illegal use of controlled substances in order to receive program benefits and the department may provide a referral to an appropriate treatment resource for drug abuse treatment or other resource; and

(6)(A) A requirement that a dependent child's eligibility for program benefits shall not be affected by a caretaker relative's ineligibility due to positive results on a drug test.

(B) An appropriate protective payee shall be designated to receive program benefits on behalf of the dependent child.

History. Acts 2015, No. 1205, § 1; 2017, No. 314, §§ 7, 8. pilot program” in the introductory language; and substituted “no less than” for

Amendments. The 2017 amendment substituted “testing program” for “testing “urine-based” in (5)(A) and (5)(B).

20-76-706. Information regarding drug testing.

(a) All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received by the Department of Workforce Services as a part of the drug testing program under this subchapter shall be confidential and not subject to disclosure and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings.

(b)(1) Information regarding drug test results for a test administered under this subchapter shall not be released to law enforcement officers or used in any criminal proceeding.

(2) Information released contrary to subdivision (b)(1) of this section is inadmissible as evidence in a criminal proceeding.

(c) This subchapter does not prohibit:

(1) The department or a drug testing agency conducting the drug test from having access to an adult applicant’s or adult recipient’s drug test information or using the information when consulting with legal counsel in connection with actions brought under or related to this subchapter or when the information is relevant to its defense in a civil or administrative matter; or

(2) The reporting of child abuse, child sexual abuse, or neglect of a child.

History. Acts 2015, No. 1205, § 1.

20-76-707. Positive drug test result not a disability.

An applicant or recipient who receives a positive result on a drug test administered under this subchapter shall not be deemed to have a disability because of the drug test result alone.

History. Acts 2015, No. 1205, § 1.

20-76-708. Rulemaking authority.

(a) The Director of the Department of Workforce Services, in coordination with the Department of Human Services, shall promulgate rules necessary for the implementation of this subchapter.

(b) The director shall consider the following when promulgating rules:

(1) Testing procedures established by the United States Department of Health and Human Services and the United States Department of Transportation;

(2) Screening procedures established by the substance abuse experts to determine when a person exhibits the criteria to determine that there is reasonable cause to suspect that a person is likely to use drugs;

(3) Body specimens and minimum specimen amounts that are appropriate for drug testing;

(4) Methods of analysis and procedures to ensure reliable drug testing results, including without limitation standards for initial tests and confirmation tests;

(5) Minimum detection levels for each drug or drug metabolite for the purpose of determining a positive result;

(6) Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens tested; and

(7) Retention, storage, and transportation procedures to ensure reliable results of drug tests used in the administration of this subchapter.

History. Acts 2015, No. 1205, § 1; inserted “in coordination with the Department of Human Services” in (a).
2017, No. 314, § 9.

Amendments. The 2017 amendment

20-76-709. Effective date.

This subchapter shall be effective no later than December 31, 2015.

History. Acts 2015, No. 1205, § 1; two (2) years from the beginning date of
2017, No. 314, § 10. the pilot program unless amended or extended by the General Assembly” at the

Amendments. The 2017 amendment deleted “and shall expire after a period of end.

CHAPTER 77

MEDICAL ASSISTANCE

SUBCHAPTER.

1. GENERAL PROVISIONS.
2. HEALTH RESOURCES COMMISSION. [REPEALED.]
3. THIRD-PARTY LIABILITY.
4. PRESCRIPTION DRUGS.
5. EYE CARE.
6. UNINSURED CHILDREN’S PROGRAM. [REPEALED.]
7. SPECIAL NEEDS TRUST REVOLVING FUND.
8. HOME INTRAVENOUS DRUG THERAPY SERVICES.
9. MEDICAID FRAUD FALSE CLAIMS ACT.
10. DONATED DENTAL SERVICES PROGRAM OF ARKANSAS.
11. ARKIDS FIRST PROGRAM ACT.
12. MEDICAID PROGRAM FOR LOW-INCOME DISABLED WORKING PERSONS.
13. MEDICAL ASSISTANCE PROGRAMS INTEGRITY LAW.
14. PRESCRIPTION DRUG ACCESS IMPROVEMENT ACT.
15. COMMUNITY-BASED HEALTHCARE ACCESS PROGRAMS.
16. ARKANSAS YOUTH SUICIDE PREVENTION ACT.
17. MEDICAID FAIRNESS ACT.
18. ARKANSAS LONG-TERM CARE PARTNERSHIP PROGRAM.
19. ASSESSMENT FEE ON HOSPITALS TO IMPROVE HEALTHCARE ACCESS.
20. ARKIDS FIRST MEDICAL ASSISTANCE PROGRAMS ENROLLMENT AND RETENTION IMPROVEMENT PROGRAM.
21. MEDICAID ELIGIBILITY VERIFICATION SYSTEM.
22. HEALTHCARE QUALITY AND PAYMENT POLICY ADVISORY COMMITTEE.

SUBCHAPTER

23. HOME CAREGIVER TRAINING.

24. HEALTH CARE INDEPENDENCE ACT OF 2013. [EXPIRED.]

25. OFFICE OF MEDICAID INSPECTOR GENERAL.

26. ARKANSAS LAY CAREGIVER ACT.

27. MEDICAID PROVIDER-LED ORGANIZED CARE ACT.

28. ASSESSMENT FEE AND PROGRAM ON MEDICAL TRANSPORTATION PROVIDERS.

A.C.R.C. Notes. Acts 2018, No. 197, § 43, provided: “ARKANSAS WORKS AND ARKANSAS HEALTH INSURANCE MARKETPLACE RESTRICTIONS.

“(a) As used in this section, ‘Arkansas Works Program’ means the Arkansas Works Program established under the Identical Acts 2016 (2nd Ex. Sess.), Nos. 1 and 2, Arkansas Code § 23-61-1001 et seq.

“(b)(1) Determining the maximum number of employees, the maximum amount of appropriation, for what purposes an appropriation is authorized, and general revenue funding for a publicly supported institution of higher education each fiscal year is the prerogative of the General Assembly.

“(2) The purposes of subdivision (b)(1) of this section are typically accomplished by:

“(A) Identifying the purpose in the appropriation act;

“(B) Delineating such maximums in the appropriation act for a publicly supported institution of higher education; and

“(C) Delineating the general revenue allocations authorized for each fund and fund account by amendment to the Revenue Stabilization Law, Arkansas Code § 19-5-101 et seq.

“(3) It is both necessary and appropriate that the General Assembly restrict the use of appropriations authorized in the acts of publicly supported institutions of higher education.

“(c)(1) Except as provided in this subsection, the publicly supported institutions of higher education shall not allocate, budget, expend, or utilize any appropriation authorized by the General Assembly for the purpose of advertisement, promotion, or other activities designed to promote or encourage enrollment in the Arkansas Health Insurance Marketplace or the Arkansas Works Program, including without limitation:

“(A) Unsolicited communications mailed to potential recipients;

“(B) Television, radio, or online commercials;

“(C) Billboard or mobile billboard advertising;

“(D) Advertisements printed in newspapers, magazines, or other print media; and

“(E) Internet websites and electronic media.

“(2) This subsection does not prohibit the publicly supported institutions of higher education from:

“(A) Direct communications with licensed insurance agents;

“(B) Solicited communications with potential recipients;

“(C)(i) Responding to an inquiry regarding the coverage for which a potential recipient might be eligible, including without limitation providing educational materials or information regarding any coverage for which the individual might qualify.

“(ii) Educational materials and information distributed under subdivision (c)(2)(C)(i) of this section shall contain only factual information and shall not contain subjective statements regarding the coverage for which the potential recipient might be eligible; and

“(D) Using an Internet website for the exclusive purpose of enrolling individuals in the Arkansas Health Insurance Marketplace or the Arkansas Works Program.

“(d) The publicly supported institutions of higher education shall not apply for or accept any funds, including without limitation federal funds, for the purpose of advertisement, promotion, or other activities designed to promote or encourage enrollment in the Arkansas Health Insurance Marketplace or the Arkansas Works Program.

“(e)(1) Except as provided in subdivision (e)(2) of this section, the publicly supported institutions of higher education shall not:

“(A)(i) Except as provided in subdivision (e)(1)(A)(ii) of this section, allocate, budget, expend, or utilize an appropriation authorized by the General Assembly for the purpose of funding activities of navigators, guides, certified application counselors, and certified licensed producers under the Arkansas Health Insurance Marketplace Navigator, Guide, and Certified Application Counselors Act, Arkansas Code § 23-64-601 et seq.

“(ii) Subdivision (e)(1)(A)(i) of this section does not apply to regulatory and training responsibilities related to navigators, guides, certified application counselors, and certified licensed producers; and

“(B) Apply for or accept any funds, including without limitation federal funds, for the purpose of funding activities of navigators, guides, certified application counselors, and certified licensed producers under the Arkansas Health Insurance Marketplace Navigator, Guide, and Certified Application Counselors Act, Arkansas Code § 23-64-601 et seq.

“(2) Subdivision (e)(1) of this section does not apply to certified application counselors at health related institutions, including without limitation the University of Arkansas for Medical Sciences.

“(f) An appropriation authorized by the General Assembly shall not be subject to the provisions allowed through reallocation of resources or transfer of appropriation authority for the purpose of transferring an appropriation to any other appropriation authorized for a publicly supported institutions of higher education to be allocated, budgeted, expended, or utilized in a manner prohibited by this section.

“(g) The provisions of this section are severable, and the invalidity of any subsection or subdivision of this section shall not affect other provisions of the section that can be given effect without the invalid provision.

“(h) This section expires on June 30, 2019.”

RESEARCH REFERENCES

ALR. Limitation on right of chiropractors and osteopathic physicians to participate in public medical welfare programs. 8 A.L.R.4th 1056.

Criminal liability under state laws in connection with application for or receipt of public welfare benefits. 22 A.L.R.4th 534.

Imposition of civil penalties under state statute, upon medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare programs for providing medical services. 32 A.L.R.4th 671.

Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs. 16 A.L.R.5th 390.

Gender Reassignment or “Sex Change” Surgery as Covered Procedure Under State Medical Assistance Program. 60 A.L.R.6th 627.

Validity, Construction, and Application of State Statutes Limiting or Conditioning Receipt of Government Funds by Abortion Providers. 26 A.L.R.7th Art. 9.

C.J.S. 81 C.J.S., Soc. Sec., § 232 et seq.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-77-101. Cost-sharing charges for medically indigent — Legislative intent.

20-77-102. Program for long-term care facility care.

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SECTION.

20-77-104. Double billing — Legislative intent.

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SECTION.

- of Arkansas Children's Hospital.
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- 20-77-108. Furnishing of annual audit by nonprofit Medicaid providers.
- 20-77-109. Medicaid assistance for children — Effect on child support.
- 20-77-110. Increase in reimbursement rate.
- 20-77-111. Data reports.
- 20-77-112 — 20-77-114. [Repealed.]
- 20-77-115. Personal care reimbursement rates.
- 20-77-116 — 20-77-118. [Repealed.]
- 20-77-119. Finding — Resource eligibility limit.
- 20-77-120. [Repealed.]
- 20-77-121. Adverse decisions — Notice — Rights — Definitions.
- 20-77-122. Survey agency for psychiatric residential treatment facilities of children.
- 20-77-123. Drugs for asthma and other respiratory diseases — Definitions.

SECTION.

- 20-77-124. Medicaid waiver for autism — Definitions.
- 20-77-125. Contingency fee audits prohibited — Definitions.
- 20-77-126. Relation to Arkansas Pharmacy Audit Bill of Rights.
- 20-77-127. Eligibility for long-term care.
- 20-77-128. In-home caregiver drug tests and criminal background checks — Definition.
- 20-77-129. Ambulatory surgery centers — Medicaid reimbursement — Definitions.
- 20-77-130. Medicaid provider tax returns — Definition.
- 20-77-131. Determination that a Medicaid provider is out of business — Definition.
- 20-77-132. Diagnosis-related group methodology for hospitals — Definition.
- 20-77-133. Walk-in clinic and emergent care clinic — Medicaid reimbursement — Definitions.
- 20-77-134. Direct access to chiropractic physicians.

A.C.R.C. Notes. Acts 2017, No. 1092, § 1, provided: "Legislative intent. It is the intent of the General Assembly to provide consistency and efficiency of chiropractic coverage in the Arkansas Medicaid Program."

Cross References. Agreements for indigent medical care, § 20-47-406.

Medicaid services by sex offender prohibited, § 12-12-927.

Preambles. Acts 1979, No. 617 contained a preamble which read: "Whereas, it has been brought to the attention of the Arkansas General Assembly that a limited number of Medicaid Service Providers, including but not limited to nursing homes, have engaged in the practice of receiving payments in full from the Arkansas State Medicaid Program for services rendered and in addition have billed and received payments from Medicaid eligibles, parents, spouses, guardians and other payees for identical services or considerations;

"Now, therefore"

Effective Dates. Acts 1974 (1st Ex. Sess.), No. 24, § 17: approved July 3, 1974. Emergency clause provided: "It is hereby found and determined by the Sixty-Ninth General Assembly, meeting in Extraordinary Session, that the immediate effectiveness of this Act from its date of passage is necessary for extension of the Medicaid and Prescription Drug Programs to the medically indigent, and to increase vendor payments to nursing homes. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its date of passage."

Acts 1975 (Extended Sess., 1976), No. 1107, § 4: Jan. 30, 1976. Emergency clause provided: "It is hereby found and determined by the Seventieth General Assembly, meeting in extended session, that the appropriations made herein are essential for the operations of the Children's Hospital. Therefore, an emergency is

hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after the date of its passage and approval."

Acts 1977, No. 416, § 3: Mar. 14, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that many residents of this State of low income are not eligible for assistance under the present State Medical Care Program eligibility standards; that in many instances a slight increase in Social Security, or other retirement benefits, raises such individuals' income level above the eligibility level for participation in the State's nursing home care program, thereby making such individuals totally ineligible for any nursing home assistance; and that the immediate passage of this Act is necessary to assure to all residents of this State who are qualified and in need of nursing home care, eligibility for receiving public assistance in paying for the class of nursing home care for which they are qualified, to the extent that the cost thereof exceeds their ability to pay. Therefore, an emergency is hereby declared to exist, and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1979, No. 617, § 3: Mar. 28, 1979. Emergency clause provided: "It is hereby found and determined that the system of double billing or of receiving duplicate payment for the same medical services to a Medicaid eligible has been practiced by a limited number of Medicaid Providers in this State. It is further determined that such practices are unethical and present severe financial hardships on already dependent Arkansas citizens and their families. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 1022, § 3: Apr. 14, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that because of the case *Ricarte v. State*, CR 86-31, a question has arisen over the validity of Act 1107 of the Extended Session of 1976; that this Act is a

reenactment of the former law; and that the immediate passage of this Act is necessary to clarify the state of the law on this issue. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1989, No. 942, § 4: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the General Assembly that the effectiveness of this Act on July 1, 1989 is essential to determine the utilization of Medicaid funds by nonprofit corporations through programs operated by the Department of Human Services; that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1991, No. 985, § 7: Apr. 8, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that it is in the best interest of the people of the State of Arkansas that paternity of the children be established in the most expedient manner for all children of this state; and the smooth transition from current requirements of those of this act require the provisions to become effective immediately upon passage. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1991, No. 1147, § 5: Apr. 9, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the audit requirements for participating Medicaid providers established pursuant to Section 1 of Act 942 of 1989 have created uncertainty and the same should be amended. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in

full force and effect from and after its passage and approval.”

Acts 1993, No. 1239, § 125: July 1, 1993, except for section 119 of the act which is effective April 20, 1993. Emergency clause provided: “It is hereby found and determined by the Seventy-Ninth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1993 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1993 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, Section 119 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1993.”

Acts 1997, No. 179, § 38: Feb. 17, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 10 of the First Extraordinary Session of 1995 abolished the Joint Interim Committee on Public Health, Welfare, and Labor and in its place established the House Interim Committee and Senate Interim Committee on Public Health, Welfare, and Labor; that various sections of the Arkansas Code refer to the Joint Interim Committee on Public Health, Welfare, and Labor and should be corrected to refer to the House and Senate Interim Committees on Public Health, Welfare, and Labor; that this act so provides; and that this act should go into effect immediately in order to make the laws compatible as soon as possible. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by

the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1997, No. 1360, § 132: July 1, 1997, except for section 115 of the act which is effective April 17, 1997. Emergency clause provided: “It is hereby found and determined by the Eighty-First General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1997 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1997 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety, Section 115 shall be in full force and effect from and after the date of passage and approval and the remainder of the Act shall be in full force and effect from and after July 1, 1997.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

Acts 2013, No. 1109, § 3: Apr. 11, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Medicaid providers are subject to an increasing number of contracted entities performing provider audits and that such entities should be compensated based on the volume of work that they do and not be given an incentive to identify more overpayments in order to increase the payments they receive, and that it is imperative that

changes be made in state law to remedy this problem. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2015, No. 1236, § 2: Apr. 7, 2015. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that reimbursements under the Arkansas Medicaid Program are subject to federal upper pay-

ment limits; that reimbursements under the current law may exceed the federal upper payment limits, requiring the excess cost to be funded entirely through state general revenues; and that this act is immediately necessary to protect the fiscal integrity of the Arkansas Medicaid Program. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-77-101. Cost-sharing charges for medically indigent — Legislative intent.

(a) It is the intent of the General Assembly that the Medicaid medical assistance program administered by the Department of Human Services is intended to be supplemental to other potential sources of payment which are or may be available to pay for the costs of medical care delivered to residents of this state. To ensure that the appropriated funds are available to meet the needs of those residents, it is hereby declared the public policy of the State of Arkansas that the program is the payor of last resort to supplement and not supplant other sources which are or may be available to any individual, except when federal requirements under Title V specify otherwise.

(b) The appropriate division of the department, in order to comply with Pub. L. No. 92-603, § 208, may, with respect to the medically indigent:

- (1) Provide that an enrollment fee, premium, or similar charge may be imposed;
- (2) Specify the amount of and the period of liability for the charges; and
- (3) Define the state's policy regarding the effect on the recipient of nonpayment of required charges.

History. Acts 1974 (1st Ex. Sess.), No. 24, § 13; 1993, No. 249, § 1.

A.C.R.C. Notes. Title V, referred to in this section, is an apparent reference to Title V of the Social Security Act, codified

as 42 U.S.C. § 501 et seq.

U.S. Code. Pub. L. No. 92-603, § 208, referred to in this section, is codified as 42 U.S.C. §§ 1396a and 1396a note.

RESEARCH REFERENCES

Ark. L. Rev. An Accident Waiting to Happen: Arkansas Department of Health and Human Services v. Ahlborn Exposes Inequities in Medical Benefits Legislation, 60 Ark. L. Rev. 533.

CASE NOTES

ANALYSIS

Eligibility.
Public Policy and Trusts.

Eligibility.

Department of Human Services prevailed in its argument that the applicant's daughter sold the applicant a life estate in the daughter's home and spent thousands of dollars of the applicant's money to improve the home to artificially impoverish the applicant so that the applicant would be eligible for Medicaid. *Groce v. Dir.*, 82 Ark. App. 447, 117 S.W.3d 618 (2003).

Public Policy and Trusts.

Trustee intended to modify the trust in order to qualify a beneficiary for public benefits; because impoverishing the ben-

eficiary in order to qualify her would make the trust provisions void, the modified provisions would have been void on grounds of public policy, and the trial court's denial of the modification motion was that the purpose for modifying the trust would be defeated. In *re Ruby G. Owen Trust*, 2012 Ark. App. 381, 418 S.W.3d 421 (2012).

Trial court considered case law from other jurisdictions that permitted the modification the trustee requested in this case, in order to qualify a beneficiary for public benefits, but the trial court did not find that the modification was permissible under public policy and Arkansas law; the court was not left with a firm conviction that a mistake was committed. In *re Ruby G. Owen Trust*, 2012 Ark. App. 381, 418 S.W.3d 421 (2012).

20-77-102. Program for long-term care facility care.

(a) The appropriate division of the Department of Human Services is authorized to establish a program to provide for long-term care facility care for all residents of this state who are found to be qualified for and in need of long-term care facility care, as provided in this section.

(b) The program shall consist of:

(1) Long-term care facility care for those persons eligible to receive medical care benefits under Title XIX of the Social Security Act in accordance with federal and state regulations promulgated therefor, within the maximum limitations provided under federal law or regulation for federal reimbursement for long-term care facility care under Title XIX of the Social Security Act; and

(2) A program of state financial assistance for long-term care facility care for persons who are not eligible for medical care benefits under Title XIX of the Social Security Act to the extent that the cost of the class of long-term care facility care for which the person is determined to be qualified exceeds the ability of the person to pay for the care.

(c)(1) However, the deputy director of the appropriate division of the department shall, in establishing the level of payment for services and benefits for long-term care facility care to be provided under the provisions of this section, promulgate appropriate rules and regulations to limit the cost of services to the State of Arkansas to funds available

or estimated to be available to the appropriate division for that purpose during each fiscal year.

(2) The regulations promulgated by the deputy director shall provide that all persons eligible within each class of eligibility shall receive equal consideration for benefits.

(3) The deputy director of the appropriate division of the department is authorized to promulgate such additional rules and regulations as deemed to be necessary to prevent abuse of benefits under this section, yet make available to the residents of this state who are eligible the full benefits of this section within the limitation of funds available therefor.

(d) The Director of the Department of Human Services, with the approval of the Governor and after obtaining the advice of the Legislative Council, may provide for an expanded comprehensive program of long-term care facility care for residents of this state if he or she deems the program advisable or appropriate in order to take advantage of expanded federal programs or participation therein, within the limitation of funds that may be available to the department therefor.

History. Acts 1965 (2nd Ex. Sess.), No. 14, § 7; 1977, No. 416, § 1; A.S.A. 1947, § 83-162; Acts 2003, No. 136, § 1; 2017, No. 591, § 5.

U.S. Code. Title XIX of the Social Security Act referred to in this section is codified as 42 U.S.C. § 1396 et seq.

Amendments. The 2017 amendment repealed (e).

20-77-103. Compacts with certain out-of-state hospitals — Definition.

(a) The Governor is authorized to enter into compacts or agreements with one (1) or more public-supported hospitals located within a reasonable distance from the Arkansas border which are used as teaching hospitals for state-supported medical schools in adjoining states. Under the terms of these agreements, the public-supported teaching hospitals shall agree to furnish medical and hospital services for indigent citizens of this state where payment is not available through public welfare or other programs and, upon the payment for these services, from the appropriation provided for by law, of an amount required to reasonably reimburse the public-supported hospital for the costs of these services.

(b) For the purposes of this section, a “public-supported hospital within a reasonable distance from the border of this state” means a public-supported hospital located within fifty (50) miles of the border of Arkansas.

(c) In determining the amount of payments to be made to any public-supported hospital used as a teaching hospital as provided in subsections (a) and (b) of this section, the Governor shall determine the extent to which medical and hospital services have been received by Arkansas citizens during previous years. These payments shall be based upon reasonable estimates of the cost of providing medical services for the year in which payments are to be made.

(d) Each agreement shall be for a fiscal year period but may be renewed, provided funds are appropriated for that purpose, upon mutual agreement of the Governor and the appropriate officials of the public-supported hospital in the other state.

History. Acts 1969, No. 490, § 2; A.S.A. 1947, § 83-220.

Publisher's Notes. Acts 1969, No. 490, § 1 provided that the legislature had determined that many indigent persons

were receiving medical care in states adjoining Arkansas and that payment for those services was a necessary expenditure of government.

20-77-104. Double billing — Legislative intent.

(a) It is the specific intent of this section and § 20-77-105 to prohibit any provider of medical services who participates in the Arkansas Medicaid Program to bill or receive payment from any Medicaid-eligible person, his or her spouse, relative, guardian, or any other prospective payee for services or considerations for which payment is either payable in full or has been paid in full by the program.

(b) It is not the intent of this section and § 20-77-105 to eliminate any copayment requirement on the part of any Medicaid-eligible person or his or her payee as required or as provided for in the Arkansas state plan for Medicaid as approved by the United States Department of Health and Human Services.

(c) It is the intent of this section and § 20-77-105 to prohibit any payment by any Medicaid-eligible person or his or her payee in excess of the rate or fee for service that the medical services provider has agreed to accept as payment in full as evidenced by written agreement or contract to participate in the program.

History. Acts 1979, No. 617, § 1; A.S.A. 1947, § 83-172.

CASE NOTES

Payments.

District court properly concluded that federal and Arkansas Medicaid laws, 42 U.S.C. § 1396a(a)(25)(C) and this section, did not bar a medical services provider from foregoing Medicaid's guaranteed

payment for covered services and opting instead to bill the patient or liable third parties directly. *Robinett v. Shelby County Healthcare Corp.*, 895 F.3d 582 (8th Cir. 2018).

20-77-105. Double billing — Suspension of medical services provider from Arkansas Medicaid Program.

(a) Any provider of medical services which shall be determined by the administrator of the single state agency for Medicaid to purposely engage in the practice of seeking or receiving double or duplicate payments for the same services either through double billing or through any other device may be suspended from the Arkansas Medicaid Program for a period of time not less than ninety (90) days or not more than one (1) year.

(b) In addition, as a condition of and before reinstatement to the program, the medical services provider shall make full and reasonable restitution to the Medicaid-eligible person or his or her payee for all payment collected.

History. Acts 1979, No. 617, § 2; A.S.A. 1947, § 83-173.

20-77-106. Medical services program for Medicaid-eligible patients of Arkansas Children's Hospital.

(a) The Arkansas Children's Hospital, as recognized by § 20-78-102, is authorized to enter into agreements with the appropriate division of the Department of Human Services to establish and maintain a medical services program for Medicaid-eligible patients of the Arkansas Children's Hospital and to transfer funds to the Medical Services Fund Account pursuant to such an agreement.

(b) Such an agreement between the Arkansas Children's Hospital and the appropriate division of the department shall be in compliance with federal law and shall meet the qualifications necessary for federal funds to be paid for the care of eligible patients in the Arkansas Children's Hospital.

(c) The Chief Fiscal Officer of the State shall make rules and regulations for the transfer of state funds appropriated for the Arkansas Children's Hospital in order to reimburse the account for expenditures made by the appropriate division of the department in accordance with agreements made between the Arkansas Children's Hospital and the appropriate division of the department.

History. Acts 1975 (Extended Sess., 1976), No. 1107, § 3; reen. Acts 1987, No. 1022, § 1.

20-77-107. Program for indigent medical care — Rules and regulations.

(a)(1) The appropriate division of the Department of Human Services is authorized to establish and maintain an indigent medical care program.

(2) However, eligibility regulations for the ARKids First Program Act, § 20-77-1101 et seq., shall not include an assets or a resource test for children or families of children eighteen (18) years of age or younger.

(b) The Director of the Department of Human Services is further authorized to enter into separate agreements with the University of Arkansas for Medical Sciences and private institutions in order to provide maximum medical care for the indigent persons of this state.

(c) The director may enter into agreements with private or public entities to assist in the enforcement of rules and regulations of an indigent medical program, including:

(1) Utilization review; and

(2) Professional review of providers participating in the program.

(d)(1) The director shall ensure that any entity with whom the department contracts to assist in the enforcement of rules and regulations of an indigent medical program will fulfill its duties in accordance with state and federal law and regulations.

(2) The director may terminate any contractor who excessively burdens the State of Arkansas with the defense of appeals of sanctions or citations of deficiencies that are resolved in favor of the program provider.

(e) Nothing in this subchapter shall be construed to permit the department or any entity with whom it contracts to enforce any rules or regulations that are not lawfully promulgated pursuant to federal or state law, provided that the department and any entity with whom it contracts may rely on official publications of the United States Department of Health and Human Services for the administration of the Arkansas Medicaid Program and other rules, regulations, standards, guidance, or information that apply to the Arkansas Medicaid Program by reference in statute, promulgated regulation, rule, or official federal publication.

(f) The director shall ensure that the professional review of providers, except long-term care facilities and their reviewers, participating in the program comply with the following:

(1) The party conducting any professional reviews of providers participating in the program shall be knowledgeable in the specific areas of law and regulations being enforced;

(2)(A) Every citation or deficiency cited to a provider shall refer by source and number to the authority upon which the citation or deficiency is based.

(B) However, the requirement of subdivision (f)(2)(A) of this section does not limit the department and any entity with whom it contracts in the exercise and application of professional medical judgment in determining when and under what circumstances care is medically necessary;

(3) The professional review process shall include an informal dispute resolution process to allow the provider to challenge the citation or deficiency cited or sanction to a person other than the person making the citation as defined by the director;

(4) The director shall establish a system to ensure standard and consistent application of sanctions and citation or deficiencies among surveyors in different areas of the state; and

(5) The director shall establish a process for program providers to appeal a decision of a reviewer pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1989, No. 821, § 7; 1995, No. 710, § 6; 2001, No. 724, § 1; 2003, No. 1182, § 1.

Cross References. Department of Human Services authorized to issue rules to

assure compliance with federal statutes, rules, and regulations, § 25-10-129.

Volunteer immunity for licensed health-care professionals, § 16-6-201.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 U. Ark. Little Rock L. Rev. 557.

20-77-108. Furnishing of annual audit by nonprofit Medicaid providers.

(a) Every nonprofit corporation, except those licensed under § 20-9-201 et seq., which is eligible to receive payments of twenty-five thousand dollars (\$25,000) or more for services supplied as a Medicaid provider shall, as a condition of enrollment, provide the Department of Human Services with an annual financial and compliance audit. The audit shall cover the entire operations of the nonprofit organization and be in accordance with the "Guidelines for Financial and Compliance Audits of Programs Funded by the Arkansas Department of Human Services" as promulgated by the department.

(b) Every nonprofit corporation licensed under § 20-9-201 et seq. which is eligible to receive payments of twenty-five thousand dollars (\$25,000) or more for services supplied as a Medicaid provider shall, as a condition of enrollment, provide the department with an annual financial audit. The audit shall cover the entire operations of the organization and be in accordance with the "Guidelines for Financial and Compliance Audits of Programs Funded by the Arkansas Department of Human Services".

(c) The department is specifically authorized to promulgate regulations establishing subrecipient and provider audit requirements for all programs funded through the department.

History. Acts 1989, No. 942, § 1; 1991, No. 1147, § 1.

20-77-109. Medicaid assistance for children — Effect on child support.

(a) By accepting Medicaid assistance for or on behalf of a child, the recipient thereof shall be deemed to have assigned to the Office of Child Support Enforcement and any appropriate division of the Department of Human Services any rights to medical support, and for collection and distribution under Title IV-D of the Social Security Act, any rights to child support from any other person as the recipient may have:

(1) In his or her own behalf or in behalf of any other family member for whom the recipient is receiving assistance; and

(2) Accrued at the time the assistance, or any portion thereof, is accepted.

(b) The recipient shall have the right to revoke the assignment for the collection and distribution of child support by requesting revocation of the assignment in writing. However, a revocation shall not affect the requirements of § 20-77-307.

(c) Support rights assigned to the department under this section shall constitute an obligation owed to the State of Arkansas by the person responsible for providing the support, and the obligation shall be collectible under all legal processes.

(d) The appropriate division of the department shall give notice, in writing, to each applicant for assistance. The notice shall state that acceptance of assistance would invoke the provisions of subsection (a) of this section and result in an assignment under subsection (a) of this section.

History. Acts 1991, No. 985, §§ 1-3; 1993, No. 1242, § 6.

Publisher's Notes. Acts 1993, No. 957, § 4 transferred the Child Support Enforcement Unit from the Division of Economic and Medical Services of the Department of Human Services to the Department of Finance and Administra-

tion — Revenue Division and renamed it the "Office of Child Support Enforcement".

U.S. Code. Title IV-D of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 651 et seq.

Cross References. Child Support Enforcement Unit — Employment of attorneys, § 9-14-210.

CASE NOTES

Cited: State Office of Child Support Enforcement v. Harnage, 322 Ark. 461, 910 S.W.2d 207 (1995).

20-77-110. Increase in reimbursement rate.

Notwithstanding any other provision in federal law or departmental commitment which may exist to the contrary, the Department of Human Services shall not increase any reimbursement rate to any provider or provider groups supported in whole or in part by funds administered by the department, nor shall it adopt any other rule, regulation, or amendment to the Arkansas Medicaid Program that would result in an obligation of the general revenues of the state without first seeking and receiving the approval of the Governor and the Chief Fiscal Officer of the State.

History. Acts 1993, No. 1239, § 73.

20-77-111. Data reports.

(a) The Director of the Department of Human Services shall cause to be prepared a compilation of data on the Arkansas Medicaid Program.

(b)(1) The report shall be issued quarterly and shall include comparisons of expenditures and recipients for the quarter with those of the previous quarters and for the same period the previous year.

(2) It shall include other comparisons in the format as may be requested by the Legislative Council, the House Committee on Public

Health, Welfare, and Labor, and the Senate Committee on Public Health, Welfare, and Labor or appropriate subcommittees thereof to which the reports are to be delivered.

(c)(1) The report shall also identify any changes in eligibility requirements, level of benefits, methods or rates of reimbursement, and any program adjustments implemented to achieve savings in any category of the program.

(2) The report shall also identify any increase or decrease in expenditures as a result of any of these changes in the program.

History. Acts 1993, No. 1239, § 117; 1997, No. 179, § 32; 2003, No. 1473, § 44; 2013, No. 1132, § 47.

Amendments. The 2013 amendment deleted "Interim" following "House" and "Senate" in (b)(2).

20-77-112 — 20-77-114. [Repealed.]

Publisher's Notes. These sections, concerning reimbursement for mandated expenditures for ICF/MR facilities, mandated costs for nursing facilities, and child health management services, were repealed by Acts 1999, No. 1537, §§ 106,

108, 110. The sections were derived from the following sources:

20-77-112. Acts 1997, No. 1360, § 103.

20-77-113. Acts 1997, No. 1360, § 110.

20-77-114. Acts 1997, No. 1360, § 120.

20-77-115. Personal care reimbursement rates.

Personal care reimbursement rates shall be established at twelve dollars and thirty-five cents (\$12.35) per unit or at lesser amounts as may be established for a program of client-directed personal care which may be developed and implemented by the Department of Human Services.

History. Acts 1997, No. 1360, § 125.

20-77-116 — 20-77-118. [Repealed.]

Publisher's Notes. These sections, concerning the possibility of Medicare waivers to authorize high reimbursements in economically disadvantaged counties, were repealed by Acts 2013, No.

279, § 1. The sections were derived from the following sources:

20-77-116. Acts 1999, No. 1595, § 1.

20-77-117. Acts 1999, No. 1595, § 2.

20-77-118. Acts 1999, No. 1595, § 3.

20-77-119. Finding — Resource eligibility limit.

(a) The General Assembly finds that:

(1) The income of many elderly Arkansans slightly exceeds the Medicaid eligibility level;

(2) Without adequate health care, many elderly Arkansans will develop more serious health problems, causing them to become debilitated and resulting in loss of independence, higher health costs, and possibly death; and

(3) Expanded Medicaid coverage would improve the health of elderly Arkansans, extend their lives, and reduce their health costs.

(b) When funds become available, the Department of Human Services shall raise the resource eligibility limit for persons sixty-five (65) years of age and over to four thousand dollars (\$4,000) for a single individual and six thousand dollars (\$6,000) for a married couple.

History. Acts 2001, No. 1086, §§ 1, 2.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Legislation, 2001 Arkansas General Assembly, Public Health and Welfare, 24 U. Ark. Little Rock L. Rev. 557.

20-77-120. [Repealed.]

Publisher's Notes. This section, concerning Medicaid waiver for home and community-based care, was repealed by Acts 2017, No. 591, § 6. The section was derived from Acts 2003, No. 1402, § 1; 2013, No. 1132, § 48.

20-77-121. Adverse decisions — Notice — Rights — Definitions.

- (a) As used in this section:
 - (1) "Adverse action" means the denial, termination, suspension, or reduction of Medicaid eligibility or covered services;
 - (2) "Beneficiary" means:
 - (A) A person who has applied for medical assistance under the Arkansas Medicaid Program; or
 - (B) A person who is a recipient of medical assistance under the Arkansas Medicaid Program; and
 - (3) "Department" means the Department of Human Services.
- (b) If an application or claim for medical assistance is denied, in whole or in part, or is not acted upon with reasonable promptness, the department shall provide written notice:
 - (1) Of the beneficiary's right and opportunity for a fair hearing under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;
 - (2) Of the method by which the beneficiary may obtain a fair hearing; and
 - (3) That the beneficiary may:
 - (A) Represent himself or herself; or
 - (B) Be represented by:
 - (i) Legal counsel;
 - (ii) A friend; or
 - (iii) Any other spokesperson except a corporation.
- (c) A notice required under subsection (b) of this section shall include, but not be limited to:
 - (1) A statement detailing:
 - (A) The type and amount of medical assistance that the beneficiary has requested; and
 - (B) The adverse action that the department has taken or proposes to take; and
 - (2) A statement of the reasons for the adverse action that shall include, but not be limited to:

(A) The specific facts regarding the individual beneficiary that support the action; and

(B) The sources from which the facts were derived.

(d) If the adverse action that the department has taken or proposes to take is based on a determination of medical necessity or other clinical decision, the notice required under subsection (b) of this section shall:

(1)(A) Include all of the following:

(i) Specification of the medical records upon which the physician or clinician relied in making the determination; and

(ii) Specification of any portion of the criteria for medical necessity or coverage that is not met by the beneficiary.

(B) Generic rationales or explanations shall not suffice to meet the requirements of subdivision (d)(1)(A) of this section;

(2)(A) Include a statement of:

(i) The specific regulations that support the adverse action; or

(ii) The change in federal or state law, if any, since the application was filed, that requires the adverse action.

(B) The information required under subdivision (d)(2)(A) of this section shall include a brief statement of the reasons for the adverse action based on the individual beneficiary's circumstances.

(C) The department and others acting on behalf of the department may not cite or rely on policies that are inconsistent with federal or state laws and regulations or that were not properly promulgated; and

(3) Include an explanation of:

(A) The beneficiary's right to request a fair hearing, if available; or

(B) In cases of an adverse action based on a change in law:

(i) The circumstances under which a fair hearing will be granted; and

(ii) An explanation of the circumstances under which medical assistance is provided or continued if a fair hearing is requested.

(e)(1) If a beneficiary appeals an adverse action under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the reviewing authority shall consider only those adverse actions that were included in the written notice to the beneficiary as required under subsections (c) and (d) of this section.

(2) All determinations of the medical necessity of any request for medical assistance shall be based on the individual needs of the beneficiary and his or her medical history.

(f) If the department receives an appeal from a beneficiary regarding an adverse action, the department shall provide the beneficiary all records or documents pertaining to the department's decision or the department's contractor's decision to take the adverse action.

(g) If the adverse action is based upon a determination that the requested medical assistance is, or was, not medically necessary, the records and documents required to be provided under this section shall include all relevant material produced by the department or a contractor of the department that contains relevant information concerning the medical necessity determination.

History. Acts 2005, No. 2227, § 1.

20-77-122. Survey agency for psychiatric residential treatment facilities of children.

(a) To the extent required by federal law, the Division of Medical Services of the Department of Human Services shall designate a survey agency to conduct restraint and seclusion surveys in psychiatric residential treatment facilities for children as defined in § 9-28-402.

(b) No designation by the division shall act as a waiver of the provisions of § 9-28-407(a)(3) or any other applicable law governing child welfare agencies.

History. Acts 2005, No. 2234, § 5.

20-77-123. Drugs for asthma and other respiratory diseases — Definitions.

(a) As used in this section:

(1) “Drug Review Committee” means physicians and pharmacists who perform unbiased reviews of drugs to determine which drugs should be recommended for inclusion on the Preferred Drug List maintained by the Division of Medical Services of the Department of Human Services;

(2) “Emergency override” means a process developed by the division that permits a pharmacist to obtain immediate permission to dispense an emergency supply of a drug prescribed by the treating physician to treat a medical emergency and for which Medicaid will provide reimbursement;

(3) “Fail-first” means the requirement that a Preferred Drug List drug be utilized before the use of a non-Preferred Drug List drug;

(4) “Override” means a process developed by the division that permits a physician to request review of and to seek permission to prescribe a non-Preferred Drug List drug for which Medicaid will provide reimbursement;

(5) “Preferred Drug List” means a list of drugs within a class of drugs for which Medicaid will provide reimbursement without need of a prior authorization; and

(6) “Unbiased review” means a review by physicians and pharmacists, selected, approved, or appointed by the division, of scientific evidence to determine the comparative effectiveness and safety of healthcare treatments of drugs within a class.

(b) In the event that the division institutes a fail-first practice or policy for drugs for the treatment of asthma or other respiratory diseases, the division shall provide a process to request an override.

(c) In cases of medical emergencies resulting from asthma or other acute respiratory diseases, the dispensing pharmacist shall seek an emergency override before dispensing the emergency supply of drug or drugs to treat the medical emergency condition.

History. Acts 2005, No. 2251, § 1.

20-77-124. Medicaid waiver for autism — Definitions.

(a) As used in this section:

(1) “Autism spectrum disorder” means a neurobiological condition that causes significant communication, social, and behavioral challenges that is diagnosed by a team of professionals, including without limitation a licensed physician, licensed psychologist, and a licensed speech-language pathologist;

(2) “Evidence-based strategies” means treatments that have been proven effective with children diagnosed with autism spectrum disorder as established by the National Standards Report by the National Autism Center; and

(3) “Intensive early intervention treatment” means individualized treatment utilizing evidence-based strategies based on a detailed assessment of the child that occurs:

(A) In the home of the child;

(B) In the presence of the parent or legal guardian of the child; and

(C) For a maximum period of twenty-five (25) hours per week.

(b)(1) The Department of Human Services shall seek a Medicaid waiver from the Centers for Medicare & Medicaid Services to provide intensive early intervention treatment to any eligible child who has been diagnosed with an autism spectrum disorder.

(2)(A) The waiver shall be for children eighteen (18) months of age through seven (7) years of age.

(B) A child shall not participate in the Medicaid waiver under this section for more than three (3) years.

(C) The Medicaid waiver under this section shall not pay more than fifty thousand dollars (\$50,000) annually per child.

(3) The waiver shall seek to develop skills of children in the areas of cognition, behavior, communication, and social interaction.

(c)(1) The department shall apply for the Medicaid waiver under this section only as funding becomes available for that purpose.

(2) No later than January 1, 2016, the department shall apply to add an additional fifty (50) eligibility slots to the Medicaid waiver for autism, to the extent that appropriation and funding are available.

History. Acts 2007, No. 1198, § 1; 2015, No. 1008, § 1.

Amendments. The 2015 amendment rewrote (a); in (b)(1), substituted “treatment” for “individualized therapy services”, inserted “eligible” preceding “child”, and substituted “an autism spec-

trum disorder” for “a pervasive developmental disorder”; in (b)(2)(A), substituted “eighteen (18) months” for “three (3) years”, and “seven (7) years” for “ten (10) years”; substituted “A child shall not” for “No child shall” in (b)(2)(B); redesignated (c) as (c)(1); and added (c)(2).

20-77-125. Contingency fee audits prohibited — Definitions.

(a) As used in this section:

(1) "Healthcare provider" means a person enrolled to provide health or medical care services or goods authorized under Medicaid;

(2) "Medicaid" means the medical assistance program provided in this state under Title XIX of the Social Security Act of 1965, 42 U.S.C. § 1396 et seq., including components of the program;

(3) "Medicaid integrity audit contract" means a contract required under federal law between the Department of Human Services and a Medicaid integrity audit program contractor to:

(A) Review the actions of healthcare providers furnishing services or goods for which payment may be made under the Arkansas Medicaid Program to determine whether fraud, waste, or abuse has occurred or is likely to occur, or whether fraud, waste, or abuse has the potential for resulting in an expenditure of Medicaid funds that is not intended under the Arkansas Medicaid Program;

(B) Audit Medicaid claims to ensure proper payments were made; or

(C) Identify overpayments made to individuals or entities receiving Medicaid funds; and

(4) "Person" means any individual, company, firm, organization, association, corporation, or other legal entity.

(b) The Division of Medical Services of the Department of Human Services shall not enter into a Medicaid integrity audit contract that authorizes all or part of an auditor's compensation to be based, directly or indirectly, on the amount of overpayments identified or collected by the auditor.

(c)(1) Within forty-five (45) days after April 11, 2013, the division shall seek a waiver from the Centers for Medicare & Medicaid Services of the requirement that recovery audit contractors, as identified in 42 U.S.C. § 1396a(a)(42)(B), be paid on a contingent fee basis by submitting an amendment to the Medicaid state plan to implement the requirements of this section.

(2)(A) Except as under subdivision (c)(2)(B) of this section, this section does not apply to:

(i) A contract with a Medicaid integrity audit contractor entered into before the state plan amendment is approved by the Centers for Medicare & Medicaid Services; or

(ii) An existing contingent fee contract entered into before July 1, 2013.

(B) An existing contingent fee contract shall not be renewed from and after July 1, 2013, April 11, 2013, or the date a waiver from the Centers for Medicare & Medicaid Services becomes effective, whichever is later.

History. Acts 2013, No. 1109, § 1.

20-77-126. Relation to Arkansas Pharmacy Audit Bill of Rights.

(a) From and after the date that a state plan amendment submitted under § 20-77-125 is approved by the Centers for Medicare & Medicaid Services, § 20-77-125 shall supersede and replace § 17-92-1201(f) with regard to Medicaid integrity audits of pharmacies and pharmacists, but all other subsections of § 17-92-1201 shall continue in full force and effect with regard to Medicaid integrity audits.

(b) Section 17-92-1201 is not affected by § 20-77-125 with regard to audits conducted by or on behalf of a person or entity other than Medicaid integrity audits under subsection (a) of this section.

History. Acts 2013, No. 1109, § 1. macy Audit Bill of Rights, § 17-92-1201 et
Cross References. Arkansas Phar- seq.

20-77-127. Eligibility for long-term care.

(a) The eligibility determination regarding every applicant for long-term care nursing facility placement shall be made according to the criteria exactly as set forth in:

(1) The Office of Long-Term Care Procedures for Determination of Medical Need for Nursing Home Services, as it existed on January 1, 2013; and

(2) The Medical Services Policy Manual of the Division of County Operations of the Department of Human Services, as it existed on January 1, 2013.

(b) The eligibility determination criteria established under subsection (a) of this section and any part of subsection (a) of this section shall not be modified, altered, amended, or changed before June 30, 2014.

(c)(1)(A) Under 42 C.F.R. § 435.725, certain amounts of income may be deducted from income to:

(i) Calculate the amount certain institutionalized recipients of long-term care Medicaid must contribute to the cost of their care; and

(ii) Determine the amount by which the Medicaid payment to the institution is to be reduced.

(B) The federal regulations also provide for deduction amounts for incurred expenses for “necessary medical or remedial care recognized under state law but not covered under the state’s Medicaid plan, subject to reasonable limits the agency may establish on amounts of these expenses”, which are commonly referred to as “Medicaid income offsets”.

(2) The Department of Human Services shall clarify the proper administration of 42 C.F.R. § 435.725, as it existed on January 1, 2017, by creating and promulgating rules that:

(A) Identify and define the types of expenses that are not covered by the Medicaid state plan that are potentially eligible for Medicaid income offsets;

(B) Identify the types of expenses that are not eligible for Medicaid income offsets;

(C) Define a process for determining whether the medical or remedial service is medically appropriate and necessary and not covered under the Medicaid state plan; and

(D) Set reasonable limits on the amounts allowed for eligible Medicaid income offsets.

History. Acts 2013, No. 1217, § 1;
2017, No. 892, § 1.

Amendments. The 2017 amendment
added (c).

20-77-128. In-home caregiver drug tests and criminal background checks — Definition.

(a) As used in this section, “caregiver” means an individual who has responsibility for the protection, in-home care, or custody of a Medicaid enrollee as a result of assuming the responsibility by contract.

(b)(1) A caregiver shall submit to a drug screen that tests for the use of illegal drugs through a program established by the Department of Human Services.

(2) A drug screen under this section shall be administered to:

(A) A caregiver on or after September 1, 2013; and

(B)(i) A random sampling of caregivers on or after September 1, 2013.

(ii) The random sampling shall be designed to ensure that each caregiver is tested for illegal drug use under this section at least one (1) time every five (5) years.

(iii) A caregiver who has been tested through a home health agency within the previous five (5) years for the use of illegal drugs may satisfy the testing requirement under this subsection by providing verification of the home health agency test.

(3)(A) A caregiver who refuses to submit to a drug screen required under this section or who tests positive for the use of illegal drugs in a drug screen required under this section shall be ineligible for employment paid with Medicaid funds for six (6) months after the date of the refusal or the date of the positive test result.

(B)(i) After the six-month period under subdivision (b)(3)(A) of this section, the caregiver may volunteer to undergo a new test for the use of illegal drugs under this section.

(ii) If the caregiver tests positive for the use of illegal drugs in a voluntary drug screen under this section, the caregiver shall be ineligible for future employment paid with Medicaid funds.

(c)(1) The Department of Human Services shall:

(A) Require a state criminal background check of a caregiver and of an applicant to become a caregiver by the Identification Bureau of the Department of Arkansas State Police that conforms to the applicable standards; and

(B) For a person who has not resided continuously in Arkansas during the previous five (5) years, require a federal criminal background check of a caregiver and of an applicant to become a caregiver by the Federal Bureau of Investigation that conforms to the applicable standards and includes the taking of fingerprints.

(2) A caregiver or an applicant to become a caregiver shall pay for the payment of any fee associated with the criminal background check under this subsection.

(3) Before a criminal background check is performed, a caregiver or an applicant to become a caregiver shall sign a release authorizing the criminal background check.

(4) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the Department of Human Services information obtained concerning the caregiver or applicant to become a caregiver that indicates that the caregiver or applicant to become a caregiver has pleaded guilty or nolo contendere to or has been found guilty of a felony or crime involving moral turpitude or dishonesty.

(5) The results of the criminal background check shall be used by the Department of Human Services to determine the suitability of:

(A) An applicant to become a caregiver paid with Medicaid funds;
or

(B) A caregiver for continued employment paid with Medicaid funds.

(6) A caregiver or applicant to become a caregiver who has pleaded guilty or nolo contendere to or has been found guilty of a felony or crime involving moral turpitude or dishonesty shall not be employed to provide services paid with Medicaid funds.

(7) The criminal background information of a caregiver or applicant to become a caregiver is confidential.

(d)(1) The Department of Human Services shall adopt rules to implement this section.

(2) If necessary, the Department of Human Services shall seek a waiver from the Centers for Medicare & Medicaid Services for approval of the rules adopted under this section.

History. Acts 2013, No. 1336, § 1.

20-77-129. Ambulatory surgery centers — Medicaid reimbursement — Definitions.

(a) As used in this section:

(1) “Ambulatory surgery center” means an entity certified by Medicare as an ambulatory surgical center that operates for the purpose of providing surgical services to patients and that is eligible to receive reimbursement from Medicaid for ambulatory surgery services;

(2) “Ambulatory Surgery Center Medicaid Procedure Code” means appropriate:

(A) Current Procedural Terminology codes representing procedures that do not appear on the Medicare hospital inpatient-only list or Medicaid hospital inpatient-only list and that are medically necessary and not solely for cosmetic treatment or surgery; or

(B) Comparable Current Procedural Terminology codes adopted and assigned under this section, representing procedures that do not

appear on the Medicaid hospital inpatient-only list, are medically necessary, and are not solely for cosmetic treatment or surgery;

(3) "Ambulatory Surgical Center Medicaid reimbursement rate for appropriate procedures" means ninety-five percent (95%) of ambulatory surgical center Medicare reimbursement that is currently effective for applicable Ambulatory Surgical Center Medicaid Procedure Codes;

(4) "Appropriate procedure" means a surgical procedure or other procedure commonly performed in an ambulatory surgery center setting that is not on:

(A) The Medicaid hospital inpatient-only list or Medicare hospital inpatient-only list; or

(B) The Medicaid hospital inpatient-only list for which a comparable Current Procedural Terminology code has been adopted and assigned under this section;

(5) "Current Procedural Terminology code" means the codes that are commonly used in the healthcare industry to identify services that are provided;

(6) "Hospital inpatient-only list" means a listing kept by the Centers for Medicare & Medicaid Services of procedures that should be performed on an inpatient basis only with separately recorded lists for Medicare and Medicaid;

(7) "Hospital outpatient procedure department" means a hospital-based ambulatory surgery center that bills in accordance with the Outpatient Hospital Services Medicaid Provider Guide; and

(8) "Relative Value Unit" means a service unit value measured in relation to the values of other services and involving a Current Procedural Terminology code that, when multiplied by the conversion factor and a geographical adjustment, creates the compensation level for a particular service.

(b) The purpose of this act is to decrease costs to Medicaid while increasing access to care by Arkansas's Medicaid population.

(c)(1) An appropriate procedure may be performed at an ambulatory surgery center or a hospital outpatient procedure department.

(2) If an appropriate procedure is performed at an ambulatory surgery center, the appropriate procedure and any appropriate implantable devices shall be billed using the Ambulatory Surgery Center Medicaid Procedure Codes and reimbursed pursuant to the Ambulatory Surgery Center Medicaid reimbursement rate for appropriate procedures.

(d)(1) Upon request by, and in consultation with, the Arkansas Ambulatory Surgery Association, its successor, or an ambulatory surgery center, the Department of Human Services may adopt and assign an appropriate Current Procedural Terminology code for an appropriate procedure based on a Relative Value Unit for a comparable procedure not on the Medicaid hospital inpatient-only list, if the appropriate procedure:

(A) Is not on the Medicaid hospital inpatient-only list but is on the Medicare hospital inpatient-only list; or

(B) Is a medically necessary surgical service that is not on the Medicaid hospital inpatient-only list, for which there is no corresponding reimbursement value recited in the current Medicare ambulatory surgery center fee schedule.

(2) A comparable Current Procedural Terminology code adopted and assigned under this section shall be reimbursed at ninety-five percent (95%) of the Medicare ambulatory surgical center reimbursement rate for the comparable procedure.

(3) A request for the adoption and assignment of a comparable Current Procedural Terminology code shall be submitted and approved before the appropriate procedure is performed.

(e) A reimbursement payment made under this section may not exceed the Medicaid upper payment limit as established by the Centers for Medicare & Medicaid Services.

History. Acts 2013, No. 1352, § 1;
2015, No. 1236, § 1.

Amendments. The 2015 amendment
rewrote the section.

20-77-130. Medicaid provider tax returns — Definition.

(a) As used in this section, “affected Medicaid entity” means an individual or entity that:

(1) Provides and is directly reimbursed by Medicaid for services in the Arkansas Medicaid Program;

(2) Is required to submit an annual financial audit to the Department of Human Services; and

(3) Is required to file a state income tax return, state withholding tax return, pass-through entity withholding tax return, or a composite pass-through entity tax return or pay any tax due for the previous calendar year.

(b)(1) On or before December 1 of each year, the Department of Human Services shall provide the Department of Finance and Administration with a list of the tax identification number of each person and entity enrolled to furnish Medicaid services as an affected Medicaid entity.

(2) The Department of Finance and Administration shall:

(A) Verify whether each person and entity enrolled to furnish Medicaid services identified to it under subdivision (b)(1) of this section filed and paid any state income tax liability owed for the tax year for which the return was due; and

(B) Notify the Department of Human Services if any affected Medicaid entity failed to file any state income tax return, state withholding tax return, pass-through entity withholding tax return, or a composite pass-through entity tax return or pay any tax due for the previous calendar year.

(3) Upon receiving notice from the Department of Finance and Administration under subdivision (b)(2) of this section, the Department of Human Services shall notify the affected Medicaid entity that the Department of Human Services will terminate the affected Medicaid

entity's enrollment in the Arkansas Medicaid Program unless the affected Medicaid entity shows good cause why the affected Medicaid entity's Medicaid enrollment should continue.

(c) The Department of Human Services and the Department of Finance and Administration may adopt rules as needed to implement this section.

History. Acts 2013, No. 1436, § 1.

20-77-131. Determination that a Medicaid provider is out of business — Definition.

(a) As used in this section, "entity" means:

(1) A corporation, including without limitation a professional, medical, or dental corporation;

(2) A limited liability company, including without limitation a professional, medical, or dental limited liability company; and

(3) A partnership, including without limitation a limited partnership.

(b)(1) For the purpose of determining whether an overpayment must be refunded to the United States Government, the Director of the Division of Medical Services of the Department of Human Services is authorized to determine and certify that a Medicaid provider is out of business and that an overpayment owed by the provider cannot be collected under state law and procedures.

(2) The director may make this determination on the basis of any facts and circumstances deemed relevant and material by the director.

(c) For the purpose of this section, the director may conclusively presume a provider to be out of business as of:

(1) The date of suspension, expiration, surrender, or revocation of a license or certification required for the provider to operate; or

(2) For a provider that did business in the form of an entity, the date of the:

(A) Dissolution of the entity;

(B) Occurrence of an event which would trigger dissolution; or

(C) Forfeiture or revocation of the entity's charter or authority to do business by the Secretary of State or other state authority.

(d) A determination or certification made by the director under this section:

(1) Does not abrogate, limit, or modify a provider's debt or obligation to repay;

(2) Is not a defense to recoupment of Medicaid payments from a provider; and

(3) May not serve as the basis for an adverse action against a provider.

(e) The Department of Human Services may promulgate rules to administer this section.

History. Acts 2015, No. 1269, § 1.

20-77-132. Diagnosis-related group methodology for hospitals — Definition.

(a) As used in this section, “diagnosis-related group methodology” means a system of classification of diagnoses and procedures based on the International Classification of Diseases, Tenth Revision, Clinical Modification, also known as ICD-10-CM, including without limitation:

- (1) The all-patient refined diagnosis-related groups system; and
- (2) The enhanced ambulatory procedure grouping system.

(b) To the extent possible, the Department of Human Services shall convert the hospital reimbursement systems under the Arkansas Medicaid Program to a diagnosis-related group methodology to allow more accurate classification of patient populations and description of mortality risks and severity of patient illness.

(c)(1) The department shall promulgate rules to implement this section.

(2) The rules adopted under subdivision (c)(1) of this section shall address:

(A) How supplemental payments to hospitals shall be considered;

(B) Whether funding for the transition from per diem reimbursement to diagnosis-related group methodology shall be provided to hospitals; and

(C) Whether certain types of hospital providers shall be exempt from the diagnosis-related group methodology.

(d)(1) The department, in coordination with the Arkansas Hospital Association, Inc., shall develop a plan for the conversion of the hospital reimbursement systems under the Arkansas Medicaid Program as described in subsection (b) of this section.

(2) The conversion plan shall:

(A) Include estimates of the impact of the conversion on all state and federal funds used for hospital payment, including without limitation any impact on critical-access hospitals; and

(B) Be submitted to the Legislative Council for review on or before January 1, 2018.

History. Acts 2017, No. 517, § 1.

20-77-133. Walk-in clinic and emergent care clinic — Medicaid reimbursement — Definitions.

(a) As used in this section:

(1) “Emergent care clinic” means a walk-in clinic focused on the delivery of ambulatory care in a facility outside of traditional emergency care; and

(2) “Walk-in clinic” means a medical clinic that accepts patients on a walk-in basis and without an appointment.

(b) When a Medicaid beneficiary who does not have an assigned primary care provider utilizes or attempts to utilize a walk-in clinic or emergent care clinic, the walk-in clinic or emergent care clinic shall not

decline to treat the patient due to his or her lack of a primary care provider.

(c) The Arkansas Medicaid Program shall reimburse for up to four (4) healthcare visits per year at a walk-in clinic or emergent care clinic when the Medicaid beneficiary does not have a primary care provider assigned if the walk-in clinic or emergent care clinic is associated with a hospital.

History. Acts 2017, No. 546, § 1.

20-77-134. Direct access to chiropractic physicians.

(a) On or before January 1, 2018, the Department of Human Services shall adopt rules to allow a Medicaid recipient direct access to a chiropractic physician.

(b) Rules adopted under this section shall:

(1) Allow a Medicaid recipient to receive diagnosis and treatment from a chiropractic physician without a referral from a primary care physician;

(2) Direct the Division of Medical Services of the Department of Human Services to develop a process for reporting diagnosis, treatment, costs of services, and cost-savings benefits under this section; and

(3) Specify that a chiropractic physician who provides diagnosis or treatment, or both, under this section shall receive the same reimbursement as if the Medicaid recipient had been referred to the chiropractic physician by a primary care physician.

History. Acts 2017, No. 1092, § 2.

SUBCHAPTER 2 — HEALTH RESOURCES COMMISSION

Publisher's Notes. Former subchapter 2, concerning the Health Care Access Program, was repealed by Acts 1993, No. 591, § 9. The former subchapter was derived from the following sources:

20-77-201. Acts 1985, No. 411, § 1; A.S.A. 1947, § 83-221; Acts 1991, No. 151, § 1; 1991, No. 353, § 1.

20-77-202. Acts 1985, No. 411, § 3; A.S.A. 1947, § 83-223; Acts 1991, No. 151, § 2; 1991, No. 353, § 2.

20-77-203. Acts 1985, No. 411, § 4; A.S.A. 1947, § 83-224; Acts 1991, No. 151, § 3; 1991, No. 353, § 3.

20-77-204. Acts 1985, No. 411, § 2; A.S.A. 1947, § 83-222; Acts 1991, No. 151, § 4; 1991, No. 353, § 4; 1993, No. 403, § 10.

20-77-205. Acts 1985, No. 411, §§ 1, 5; A.S.A. 1947, §§ 83-221, 83-225; Acts 1991, No. 151, § 5; 1991, No. 353, § 5.

This subchapter, concerning the Health Resources Commission, was repealed by Acts 1999, No. 638, § 3 and Acts 1999, No. 1133, § 2. The subchapter was derived from the following sources:

20-77-201. Acts 1993, No. 591, § 1.

20-77-202. Acts 1993, No. 591, § 2; 1997, No. 250, § 204; 1997, No. 1354, § 38.

20-77-203. Acts 1993, No. 591, § 3.

20-77-204. Acts 1993, No. 591, § 4.

20-77-205. Acts 1993, No. 591, §§ 5-8.

SUBCHAPTER 3 — THIRD-PARTY LIABILITY

SECTION.

- 20-77-301. Action by Department of Human Services.
- 20-77-302. Action by recipient alone — Reimbursement of division.
- 20-77-303. Action by division and recipient.
- 20-77-304. Notice of action or claim — Intervention or consolidation.
- 20-77-305. Notice to Department of Human Services of award or settlement by recipient required.
- 20-77-306. Liability of third parties to Department of Human Services — Definitions.
- 20-77-307. Assignment to Department of Human Services of rights of recovery.

SECTION.

- 20-77-308. Release of information to Department of Human Services.
- 20-77-309. Denial or reduction of benefits — Insurance policies.
- 20-77-310. Denial or reduction of benefits — Service plan corporation contracts.
- 20-77-311. Denial or reduction of benefits — Healthcare providers.
- 20-77-312. Denial or reduction of benefits — Provisions not applicable to Arkansas Medicaid Program.
- 20-77-313. Billing statements.
- 20-77-314. Definitions.
- 20-77-315. Distribution of proceeds from third-party settlement, judgment, or award or from other third-party payment.

Effective Dates. Acts 1981, No. 500, § 14: Mar. 16, 1981. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential to establish third party liability for all parties that are liable to pay the medical cost of a Medicaid recipient and that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 463, § 8: Mar. 30, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly that the third party liability and Medicaid eligibility laws of this state are in immediate need of amendment due to Federal requirements and resulting collection efforts and that this act is necessary to accomplish that purpose. Therefore, an emergency is hereby declared to exist, this act being immediately necessary for the preservation of public peace, health, and safety shall be in full force and effect, from and after its passage and approval."

20-77-301. Action by Department of Human Services.

(a)(1) When medical assistance benefits are provided or will be provided to a medical assistance recipient because of injury, disease, disability, or death for which a third party is or may be liable, the appropriate division of the Department of Human Services may recover from the person the cost of benefits so provided.

(2) To enforce the right under subdivision (a)(1) of this section, the department may institute and prosecute legal proceedings against the third person who may be liable.

(b)(1) An action taken on behalf of the division under this section or any judgment rendered in the action shall not be a bar to any action upon the claim or cause of action of the recipient, his or her guardian, personal representative, estate, or survivors against the third party who is or may be liable for the injury.

(2) An action under this section does not deny to the recipient the recovery for that portion of any damages not covered hereunder.

(c)(1) The department may recover from a third party the cost of benefits for medical care provided to indigent persons from third persons, another program administered by the department, or a program administered through another department or agency of state government.

(2) The department shall remit to other departments or agencies of state government any amounts recovered, less its pro rata share and costs of collection, for care provided by them.

(d)(1) In actions in tort hereunder, no contributory or comparative fault of a recipient shall be attributed to the state, nor shall any restitution awarded to the state be denied or reduced by any amount or percentage of fault attributed to a recipient.

(2) Notwithstanding subdivision (d)(1) of this section, if the recipient used a device, machine, or product after being warned, either verbally or in writing, that the use, misuse, or improper operation of the device, machine, or product was dangerous, risky, or could result in injury or harm to the recipient, then the statutory or common law defenses of contributory or comparative fault or negligence that could be asserted by the defendant against the recipient may also be asserted by the defendant in any action by the department or other agency of state government, and if the defenses are supported by the evidence, then recovery may be denied or reduced in the same manner as if the recipient were the plaintiff.

History. Acts 1979, No. 419, § 1; A.S.A. No. 54, § 1; 1993, No. 1225, § 1; 2011, No. 1947, § 83-171; Acts 1992 (1st Ex. Sess.), 625, § 1.

RESEARCH REFERENCES

Ark. L. Rev. Comment, Is the Made-Whole Requirement More Than We Bargained For?: From Franklin to Tallant--A Call to Reexamine the Made-Whole Doctrine in Arkansas, 60 Ark. L. Rev. 295.

An Accident Waiting to Happen: Arkansas Department of Health and Human Services v. Ahlborn Exposes Inequities in Medical Benefits Legislation, 60 Ark. L. Rev. 533.

CASE NOTES

In General.

This section simply gives the Department of Human Services the right to recover from third parties and provides that the department may enforce those rights by legal proceedings. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

This section gives the Department of Human Services the right to collect what it has paid to a recipient from responsible third parties and, in turn, gives the recipient the right to recover for damages suffered which are not compensated through Medicaid payments. *Jones v. Balay*, 810 F.

Supp. 1031 (W.D. Ark. 1992).

The Department of Human Services is not subject to traditional common-law principles of subrogation when it seeks reimbursement for medical benefits under §§ 20-77-301 et seq. and 42 U.S.C. § 1396a(a)(25). Ark. Dep't of Human Servs. v. Estate of Ferrel, 336 Ark. 297, 984 S.W.2d 807 (1999), overruled in part, Ark. Dep't of Health & Human Servs. v.

Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

Cited: In re Estate of Morgan, 310 Ark. 220, 833 S.W.2d 776 (1992); National Bank of Commerce v. Quirk, 323 Ark. 769, 918 S.W.2d 138 (1996); Ark. Dep't of Health & Human Servs. v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

20-77-302. Action by recipient alone — Reimbursement of division.

(a) When an action or claim is brought by a medical assistance recipient or his or her legal representative against a third party who may be liable for injury, disease, disability, or death of a medical assistance recipient, any settlement, judgment, or award obtained is subject to the division's claim for reimbursement of the benefits provided to the recipient under the medical assistance program.

(b) In the event of judgment or award in a suit or claim against a third party, if the action or claim is prosecuted by the recipient alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses and attorney's fees. After the payment of these expenses and attorney's fees, the court or agency shall order that the Department of Human Services receive an amount sufficient to reimburse the department the full amount of benefits paid on behalf of the recipient under the medical assistance program. The remainder shall be awarded to the medical assistance recipient.

History. Acts 1979, No. 419, § 2; 1981, No. 500, §§ 1, 2; A.S.A. 1947, § 83-171.1; Acts 1987, No. 463, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

CASE NOTES

ANALYSIS

In General.
Expenses and Fees.

In General.

This section and § 20-77-303 are clear and unambiguous. Jones v. Balay, 810 F. Supp. 1031 (W.D. Ark. 1992).

The legislature intended to follow the federal mandate that participating states develop a program for collecting benefits

paid from responsible third parties. Jones v. Balay, 810 F. Supp. 1031 (W.D. Ark. 1992).

This section provides how recovery is to be distributed and divided where the recipient pursues action alone, and § 20-77-303 provides for the division and distribution where action is pursued jointly. Jones v. Balay, 810 F. Supp. 1031 (W.D. Ark. 1992).

State laws regarding assignment and recovery of Medicaid payments were pre-

empted to the extent they required the recipient to assign her rights to recover third-party liability payments for matters other than the cost of her medical care and services. *Ahlborn v. Ark. Dep't of Human Servs.*, 397 F.3d 620 (8th Cir. 2005), *aff'd*, *Ark. Dep't of Health & Human Servs. v. Ahlborn*, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

Expenses and Fees.

Neither this section nor § 20-77-303 require or allow the court to require that

the Arkansas Department of Human Services pay, before receiving proceeds to pay its lien, a share of the attorney's fees and costs incurred by plaintiffs in obtaining recovery. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

Cited: *In re Estate of Morgan*, 310 Ark. 220, 833 S.W.2d 776 (1992); *Ark. Dep't of Health & Human Servs. v. Ahlborn*, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

20-77-303. Action by division and recipient.

(a) If an action is prosecuted both by the medical assistance recipient and the division against a third party who is or may be liable for injury, disease, disability, or death of the medical assistance recipient, then in the event of judgment or award in a suit or claim against the third party, the court shall first order paid from any judgment or award the reasonable litigation expenses incurred in prosecution of the action or claim, together with reasonable attorney's fees based solely on the services rendered for the benefit of the recipient.

(b) After payment of expenses and attorney's fees, the court shall order that the division receive an amount sufficient to reimburse the division the full amount of benefits paid on behalf of the recipient under the medical assistance program.

(c) The remainder shall be awarded to the medical assistance recipient.

History. Acts 1979, No. 419, § 3; A.S.A. 1947, § 83-171.2; Acts 2011, No. 625, § 2.

CASE NOTES

ANALYSIS

In General.
Expenses and Fees.

In General.

Section 20-77-302 and this section are clear and unambiguous. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

The legislature intended to follow the federal mandate that participating states develop a program for collecting benefits paid from responsible third parties. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

Section 20-77-302 provides how recovery is to be distributed and divided where the recipient pursues action alone, and this section provides for the division and

distribution where action is pursued jointly. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

Expenses and Fees.

Neither § 20-77-302 nor this section require or allow the court to require that the Arkansas Department of Human Services pay, before receiving proceeds to pay its lien, a share of the attorney's fees and costs incurred by plaintiffs in obtaining recovery. *Jones v. Balay*, 810 F. Supp. 1031 (W.D. Ark. 1992).

The legislature obviously intended to make clear that attorney's fees and cost of litigation deducted shall be based solely on the services rendered for the benefit of the recipient and that the Department of Human Services, in effect, pay its costs and attorney's fees in a jointly pursued

action and that the recipient do likewise.
Jones v. Balay, 810 F. Supp. 1031 (W.D.
Ark. 1992).

20-77-304. Notice of action or claim — Intervention or consolidation.

(a)(1) If either the medical assistance recipient or the appropriate division brings an action or claim against a third party, the recipient or Department of Human Services shall give to the other party written notice of the action or claim by personal service or registered mail within thirty (30) days of filing the action.

(2) This notice shall contain the names of the third party and the court in which the action is brought.

(3) Proof of the notice shall be filed in the action.

(4) If an action or claim is brought by either the department or the medical assistance recipient, the other may become a party to the action, at any time before trial on the facts, or shall consolidate his or her action or claim with the other if brought independently, at any time before trial on the facts.

(b)(1) If the recipient, his or her guardian, personal representative, estate, or survivors bring an action against the third party who may be liable for injury, disease, or disability, then notice of institution of the legal proceedings and notice of settlement shall be given the Director of the Department of Human Services.

(2) All notices shall be given by the attorney retained to assert the medical assistance recipient's claim or by the medical assistance recipient, his or her guardian, personal representative, estate, or survivors if an attorney is not retained.

History. Acts 1979, No. 419, § 4; A.S.A. 1947, § 83-171.3; Acts 1987, No. 463, § 2; 2011, No. 625, § 3.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

CASE NOTES

ANALYSIS

In General.
Derivative Claims.
Notice.

In General.

This section imposes certain obligations and duties if either the department or the recipient pursues a claim against a third

person. Jones v. Balay, 810 F. Supp. 1031 (W.D. Ark. 1992).

Derivative Claims.

Trial court erred in denying Arkansas Department of Human Services' motion for intervention, as its claims were clearly not derivative of the claims of the parents. National Bank of Commerce v. Quirk, 323 Ark. 769, 918 S.W.2d 138 (1996), over-

ruled in part, Ark. Dep't of Health & Human Servs. v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

Notice.

The clear intention of this section is to give both the Department of Human Services and the recipient of Medicaid ben-

efits separate rights to pursue claims against liable third parties; each must notify the other that it is doing so, but the action may be pursued either by the recipient alone or by the recipient and the department acting jointly. Jones v. Balay, 810 F. Supp. 1031 (W.D. Ark. 1992).

20-77-305. Notice to Department of Human Services of award or settlement by recipient required.

(a) A judgment, an award, or a settlement in any action or claim by a medical assistance recipient to recover damages for injuries, disease, disability, or death in which the Department of Human Services has an interest, shall not be satisfied without first giving the department notice and a reasonable opportunity to establish its interest.

(b) If a recipient, his or her guardian, attorney, or personal representative disposes of the funds that are to be held for the benefit of the department under this section without the written approval of the department, that person shall be liable to the department for any amount that, as a result of the disposition of the funds, is not recoverable by the department.

(c) In addition to the amount of the department's claim, a recipient, his or her guardian, attorney, or personal representative who knowingly fails to obtain written approval from the department before disposing of funds under this section is liable to the department for:

- (1) A penalty equal to ten percent (10%) of the amount of the department's claim; and
- (2) Reasonable costs and attorney's fees.

History. Acts 1979, No. 419, § 5; 1981, Acts 1987, No. 463, § 3; 2009, No. 710, No. 500, § 3; A.S.A. 1947, § 83-171.4; § 1; 2011, No. 625, § 4.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

20-77-306. Liability of third parties to Department of Human Services — Definitions.

(a) As used in this section:

(1) "Health insurer" means a commercial insurance company offering health or casualty insurance to individuals or groups including without limitation experience-rated insurance contracts and indemnity contracts that offer the following:

(A) Automobile insurance, including casualty, medical payment, uninsured motorist bodily injury coverage, and underinsured benefits except benefits payable for or limited under the terms of the policy to property damage or wrongful death;

(B) A group health plan as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., as it existed on January 1, 2007;

(C) A healthcare plan as defined in § 23-76-102 or similar laws of another state;

(D) A health maintenance organization;

(E) A liability insurance plan;

(F) A hospital and medical service corporation as defined in § 23-75-101;

(G) A managed care organization;

(H) A company that offers or administers health or casualty insurance to individuals or groups;

(I) A profit or nonprofit prepaid plan offering either medical services or full or partial payment for services that are reimbursed by Medicaid;

(J) An organization administering health or casualty insurance plans, including self-insured and self-funded plans;

(K) Other parties that are by statute, contract, or agreement, legally responsible for payment of a healthcare item or service;

(L) A pharmacy benefits manager; and

(M) Workers' compensation;

(2) "Medicaid" means the medical assistance program established under § 20-77-101 et seq.; and

(3) "Third party" means an individual, an entity, or a program that is or may be liable to pay all or part of the expenditures for Medicaid services furnished by Medicaid.

(b) A third party or health insurer that is legally liable for any medical cost of an injury, disease, disability, or condition requiring medical treatment for which Medicaid has paid, or has assumed liability to pay, shall be liable to reimburse Medicaid the lesser of:

(1) The difference between:

(A) The amount previously paid in good faith by a third party or health insurer to a recipient or healthcare provider for the medical cost of an injury, a disease, or a disability; and

(B) The full amount of the liability of the third party or health insurer; or

(2) The full amount paid by Medicaid for the medical cost of an injury, a disease, or a disability.

(c) Upon request of the Department of Human Services, a health insurer doing business in this state shall provide the department with eligibility and coverage information that will enable the department to determine:

(1) Which Medicaid recipients may be or may have been covered by the third party or health insurer;

(2) The period of the coverage;

(3) The coverage; and

(4) The name, address, and identifying number of the plan.

(d) A health insurer shall:

(1) Accept Medicaid's right of recovery and the assignment to Medicaid of the right of a Medicaid recipient or other entity for payment from the health insurer or a third party for an item or a service for which Medicaid has made payment;

(2) Subject to the time limits imposed under subdivision (d)(3) of this section and subsection (f) of this section, process and, if appropriate, pay Medicaid reimbursement claims to the same extent that the plan would have been liable had it been properly billed at the point of sale; and

(3) Agree not to deny claims submitted by the department based on:

(A) A failure to present proper documentation of coverage at the point of sale; or

(B) The date of submission of the claim if the claim is submitted within three (3) years from the date on which the claimed item or service was furnished.

(e) The assignment to Medicaid of the right of a Medicaid recipient or other entity for payment from the third party or health insurer for an item or a service for which Medicaid has made payment occurs at the time the recipient requests an item or a service.

(f)(1) A health insurer shall respond to any inquiry by the department regarding claims submitted within three (3) years after the date on which the item or service was furnished.

(2) The department shall begin an action to enforce Medicaid's rights with respect to a claim within six (6) years of the department's submission of the claim.

(g) Nothing in this subchapter requires a health insurer to reimburse Medicaid for items or services that Medicaid does not or did not cover for the recipient.

(h)(1) The department shall adopt rules necessary to implement this subchapter.

(2) The rules shall:

(A) Conform to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(B) Include provisions for contractual agreements between the department and health insurers specifying the procedures for data exchanges made under this subchapter.

History. Acts 1981, No. 500, § 4; A.S.A. employment Retirement Income Security Act of 1974, referred to in this section, is codified as 29 U.S.C. § 1167(1).
1947, § 83-171.5; Acts 1987, No. 463, § 4;
2007, No. 537, § 1; 2009, No. 952, § 16.

U.S. Code. Section 607(1) of the Em-

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

CASE NOTES

Cited: National Bank of Commerce v. Quirk, 323 Ark. 769, 918 S.W.2d 138 (1996).

20-77-307. Assignment to Department of Human Services of rights of recovery.

(a) As a condition of eligibility, every Medicaid applicant shall automatically assign his or her right to any settlement, judgment, or award which may be obtained against any third party to the Department of Human Services to the full extent of any amount which may be paid by Medicaid for the benefit of the applicant.

(b) The application for Medicaid benefits shall, in itself, constitute an assignment by operation of law.

(c) The assignment shall be considered a statutory lien on any settlement, judgment, or award received by the recipient from a third party.

(d) Every Medicaid applicant, as a condition of eligibility, shall cooperate in establishing paternity, except for good cause shown, for a child born out of wedlock for whom the recipient can legally assign rights, in obtaining medical care, support, and payments for himself or herself or any other person for whom the individual can legally assign rights, and in identifying and providing information to assist the department and the Office of Child Support Enforcement in pursuing any liable third party.

History. Acts 1981, No. 500, § 5; A.S.A. 1947, § 83-171.6; Acts 1987, No. 463, § 5; 1993, No. 1242, § 7.

Publisher's Notes. Acts 1993, No. 957, § 4 transferred the Child Support Enforcement Unit from the Division of Eco-

nomic and Medical Services of the Department of Human Services to the Department of Finance and Administration — Revenue Division and renamed it the Office of Child Support Enforcement.

RESEARCH REFERENCES

Ark. L. Rev. An Accident Waiting to Happen: Arkansas Department of Health and Human Services v. Ahlborn Exposes Inequities in Medical Benefits Legislation, 60 Ark. L. Rev. 533.

U. Ark. Little Rock L.J. Survey—Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

CASE NOTES

ANALYSIS

In General.
Third Party Recovery.

In General.

Although recipients of Medicaid benefits are required to assign rights to third-

party liability to the Arkansas Department of Health and Human Services (ADHHS), such assignment, and the lien of the ADHHS, only extends to third-party liability for medical expenses; any third-party liability for other damages is not assigned or lienable to reimburse the ADHHS for the full amount of benefits

paid. Ark. Dep't of Health & Human Servs. v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

Although the Arkansas collateral source rule applied to bar the United States from presenting evidence showing that the amount paid for medical services was less than the billed amounts because the decedent at issue was covered by Medicaid, the application of the rule would not bar recovery of the Medicaid payments, should plaintiffs prevail in their 28 U.S.C. § 2674 of the Federal Tort Claims Act suit. An action could later be brought under this section to recover the Medicaid payments by executing a lien on plaintiffs' recovery. McMullin v. United States, 515 F. Supp. 2d 904 (E.D. Ark. 2007).

Third Party Recovery.

State laws regarding assignment and recovery of Medicaid payments were preempted to the extent they required the recipient to assign her rights to recover third-party liability payments for matters

other than the cost of her medical care and services. Ahlborn v. Ark. Dep't of Human Servs., 397 F.3d 620 (8th Cir. 2005), aff'd, Ark. Dep't of Health & Human Servs. v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

Where a recipient of Medicaid benefits settled with alleged tortfeasors for medical expenses and other damages related to future care, permanent injury, pain and suffering, and lost earnings, the recipient's assignment of third-party liability to the Arkansas Department of Health and Human Services (ADHHS), and the lien of the ADHHS, extended only to the portion of the settlement attributable to the recipient's medical expenses and did not extend to the portion of the settlement attributable to other damages. Ark. Dep't of Health & Human Servs. v. Ahlborn, 547 U.S. 268, 126 S. Ct. 1752, 164 L. Ed. 2d 459 (2006).

Cited: National Bank of Commerce v. Quirk, 323 Ark. 769, 918 S.W.2d 138 (1996).

20-77-308. Release of information to Department of Human Services.

All recipients of medical assistance under the Arkansas Medicaid Program shall be deemed to have authorized all third parties including, but not limited to, insurance companies and providers of medical care to release to the Department of Human Services information needed by the department to secure or enforce its rights as assignee under § 20-77-306.

History. Acts 1981, No. 500, § 6; A.S.A. 1947, § 83-171.7; Acts 1987, No. 463, § 6.

RESEARCH REFERENCES

U. Ark. Little Rock L.J. Survey—Miscellaneous, 10 U. Ark. Little Rock L.J. 593.

20-77-309. Denial or reduction of benefits — Insurance policies.

No policy of accident or illness insurance issued or renewed after July 1, 1981, shall contain any provision denying or reducing benefits because services are rendered to an insured or dependent who is eligible for medical assistance under the Arkansas Medicaid Program.

History. Acts 1981, No. 500, § 7; A.S.A. 1947, § 83-171.8.

20-77-310. Denial or reduction of benefits — Service plan corporation contracts.

After July 1, 1981, no service plan corporation shall deliver, issue for delivery, or renew any subscriber's contract which contains any provision denying or reducing benefits because services are rendered to a subscriber or dependent who is eligible for medical assistance under the Arkansas Medicaid Program.

History. Acts 1981, No. 500, § 8; A.S.A. 1947, § 83-171.9.

20-77-311. Denial or reduction of benefits — Healthcare providers.

After July 1, 1981, no association authorized to do business in this state which provides or pays for any healthcare benefits shall issue any certificate which contains any provision denying or reducing benefits because services are rendered to a certificate holder or beneficiary who is eligible for medical assistance under the Arkansas Medicaid Program.

History. Acts 1981, No. 500, § 9; A.S.A. 1947, § 83-171.10.

20-77-312. Denial or reduction of benefits — Provisions not applicable to Arkansas Medicaid Program.

General exclusion or reduction provisions relating to benefits paid by or eligibility under governmental programs, whether state or federal, shall not be construed to apply to the Arkansas Medicaid Program.

History. Acts 1981, No. 500, § 10; A.S.A. 1947, § 83-171.11.

20-77-313. Billing statements.

Billing statements forwarded to recipients of medical assistance by vendors of medical care shall clearly state that reimbursement from the Arkansas Medicaid Program is contemplated.

History. Acts 1981, No. 500, § 11; A.S.A. 1947, § 83-171.12.

20-77-314. Definitions.

As used in this subchapter:

(1) "Action" or "claim" means a complaint, demand letter, or any other notification given to a third party by the Department of Human Services, the medical assistance recipient, the recipient's attorney, or any person acting on behalf of the recipient that the department or the medical assistance recipient requests payment from a third party for

damages to the medical assistance recipient for injury, disease, disability, or death for which a third party is or may be liable;

(2)(A) “Medical assistance recipient” means any person, including a minor, on whose behalf the department has paid medical assistance payments due to injury, disease, or disability.

(B) “Medical assistance recipient” includes a party acting on behalf of the medical assistance recipient, such as a parent, guardian, conservator, other personal representative, estate, or survivor; and

(3) “Third party” means an individual, entity, or a program that is or may be liable to pay all or part of the expenditures for medical assistance payments made by the department.

History. Acts 2011, No. 630, § 1.

20-77-315. Distribution of proceeds from third-party settlement, judgment, or award or from other third-party payment.

(a) The Department of Human Services is entitled to reimbursement for past medical assistance payments from that portion of a third-party settlement, judgment, or award or from any other third-party payment that compensates for the medical expenses.

(b) The department is entitled to receive the full amount of its medical assistance claim under this subchapter unless the portion of the third-party settlement, judgment, or award or other third-party payment that compensates for the medical expenses is less than the full amount of the department’s medical assistance claim.

(c) The department’s claim for medical assistance payments under this subchapter has priority over any claim by a medical care provider.

(d) The department’s rights under this subchapter are not extinguished by any right possessed, asserted or not asserted, by a medical assistance recipient or other person.

History. Acts 2011, No. 746, § 1; 2013, No. 1132, § 49.

Amendments. The 2013 amendment inserted “or” following “settlement, judgment” in the section heading and in (a) and (b).

SUBCHAPTER 4 — PRESCRIPTION DRUGS

SECTION.	SECTION.
20-77-401. Purpose.	20-77-404. Approval from Department of Health and Human Services.
20-77-402. Continuation of program.	
20-77-403. Fees paid to participating pharmacists.	20-77-405. Preference for generic drugs.

Effective Dates. Acts 1983, No. 518, § 8: Mar. 17, 1983. Emergency clause provided: “It is hereby found and determined by the General Assembly that it is essential to provide continued coverage of prescription drugs under the Title XIX Program in Arkansas; that this Act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is hereby declared to

exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from its passage and approval."

20-77-401. Purpose.

The purpose of this subchapter is to allow for the continued operation of a prescription drug program as a portion of the Title XIX Medicaid Program for the State of Arkansas.

History. Acts 1983, No. 518, § 1; A.S.A. section is codified as 42 U.S.C. § 1396 et seq. 1947, § 83-174.

U.S. Code. Title XIX referred to in this

20-77-402. Continuation of program.

(a) The Director of the Department of Human Services and the deputy director of the appropriate division of the Department of Human Services are authorized to provide for continued coverage of prescription drugs under the Title XIX Medicaid Program for the State of Arkansas.

(b) The director and deputy director are authorized to establish necessary program guidelines to control the provision of this service, provided that the guidelines are not in conflict with any federal or state law or regulation.

History. Acts 1983, No. 518, § 2; A.S.A. section is codified as 42 U.S.C. § 1396 et seq. 1947, § 83-174.1.

U.S. Code. Title XIX referred to in this

20-77-403. Fees paid to participating pharmacists.

(a) The Director of the Department of Human Services and the deputy director shall pay each participating pharmacist for each prescription filled under this program the pharmacist's usual and customary charge to the general public for the drug.

(b) However, until existing federal regulations limiting reimbursement for a drug to the lower of the pharmacist's usual and customary charge, or cost of the drug plus a reasonable dispensing fee, are modified or declared invalid by a court, the director and the deputy director shall pay for each prescription, the lower of:

(1) The pharmacist's usual and customary charge to the general public for the drug; or

(2) The pharmacist's cost of the drug plus a dispensing fee. The fee will be adjusted annually on July 1 of each year by the percentage change in the Consumer Price Index, except that on any July 1 immediately following a subsequent cost of dispensing survey conducted by the appropriate division of the Department of Human Services, the fee will be adjusted using the formula used by the director and the deputy director to determine the July 1, 1980, fee or other such

formula as may be developed subsequently by the director and the deputy director with the approval of the Legislative Council.

(c) In addition to the amounts paid under subdivisions (b)(1) and (2) of this section, at such time as federal regulations shall permit, the pharmacist will also be paid any additional direct and indirect costs which are generated by participation in the Title XIX Medicaid Program. The new additional costs will be paid by the state.

History. Acts 1983, No. 518, § 3; A.S.A. 1947, § 83-174.2.
U.S. Code. Title XIX referred to in this

section is codified as 42 U.S.C. § 1396 et seq.

20-77-404. Approval from Department of Health and Human Services.

(a) The Director of the Department of Human Services and the deputy director are directed to seek approval by the United States Department of Health and Human Services of the provisions of this subchapter so as to qualify this program for maximum contributions from the United States Department of Health and Human Services under its regulations until those regulations are declared invalid or modified.

(b) If, and to the extent that, the United States Department of Health and Human Services hereafter makes any valid rule that any provision of this subchapter disqualifies this program for the maximum contribution, the director and the deputy director are directed to comply with any ruling to the extent necessary to qualify for the maximum contribution.

History. Acts 1983, No. 518, § 4; A.S.A. 1947, § 83-174.3.

20-77-405. Preference for generic drugs.

Drugs dispensed under the Arkansas Medicaid Program provided for in this subchapter shall, so far as possible, be prescribed and dispensed as generic drugs.

History. Acts 1983, No. 518, § 5; A.S.A. 1947, § 83-174.4.

SUBCHAPTER 5 — EYE CARE

SECTION.	SECTION.
20-77-501. Definition.	20-77-506. Right of freedom of choice.
20-77-502. Applicability.	20-77-507. List of ocular practitioners.
20-77-503. Practice of optometry not affected.	20-77-508. Recommendation of individual practitioner unlawful and nuisance.
20-77-504. Penalty.	
20-77-505. Injunctions.	

Effective Dates. Acts 1973, No. 10, § 11: Jan. 26, 1973. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is not in the best interest of the citizens of this State that persons be directed to a particular ocular practitioner for eye examination or treatment where such examination or treatment is to be paid for in

whole or in part from public funds, and that such practice should be stopped immediately. Therefore, an emergency is hereby declared to exist and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in effect from the date of its passage and approval."

20-77-501. Definition.

For the purpose of this subchapter, unless the context otherwise requires, the term "ocular practitioner" shall include all persons licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., and all persons licensed under the Arkansas Optometry Practices Act, § 17-90-101 et seq., and none other.

History. Acts 1973, No. 10, § 3; A.S.A. 1947, § 83-1003.

20-77-502. Applicability.

(a) Nothing in this subchapter shall apply to any person who personally takes, carries, or transports a person with an injured or cut eye due to a current accidental injury or current trauma to any physician or surgeon licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., in an emergency, or personally calls any physician or surgeon on behalf of that person in an emergency.

(b) Nothing in this subchapter shall apply to any person licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., or the Arkansas Optometry Practices Act, § 17-90-101 et seq., when that person is engaged in the practice of medicine as defined in § 17-95-202 or engaged in the practice of optometry as defined in § 17-90-101.

History. Acts 1973, No. 10, §§ 7, 8; A.S.A. 1947, §§ 83-1007, 83-1008.

20-77-503. Practice of optometry not affected.

Nothing in this subchapter shall be construed to enlarge or diminish the practice of optometry as defined by law in § 17-90-101.

History. Acts 1973, No. 10, § 9; A.S.A. 1947, § 83-1009.

20-77-504. Penalty.

(a) Any person violating this subchapter shall be guilty of a violation and upon conviction shall be fined in any sum not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).

(b) Each violation shall constitute a separate offense and shall be punishable as such.

History. Acts 1973, No. 10, § 5; A.S.A. 1947, § 83-1005; Acts 2005, No. 1994, § 139.

20-77-505. Injunctions.

(a) The circuit courts of this state having general equity jurisdiction are vested with jurisdiction and power to enjoin any violation of this subchapter by complaint by any resident or state board of this state in the county in which the alleged violation of this subchapter occurred, in the county where the plaintiff resides, in which the defendant resides or, if there is more than one (1) defendant, in the county in which any defendant resides.

(b) The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this subchapter, but the remedy of injunction shall be in addition to liability to criminal prosecution, it being the intention to provide a speedy remedy against violations in the interest of public health.

History. Acts 1973, No. 10, § 6; A.S.A. 1947, § 83-1006. circuit courts, Ark. Const. Amend. 80, §§ 6, 19.

Cross References. Jurisdiction of cir-

20-77-506. Right of freedom of choice.

(a) Every person eligible for an eye examination, the payment for which shall or may be made out of public money, is guaranteed his or her freedom of choice between persons licensed under the laws governing the practice of optometry, § 17-90-101 et seq., and persons licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

(b) Every person eligible for an ear examination the payment for which shall or may be made out of public money is guaranteed his or her freedom of choice between persons licensed under the Licensure Act of Speech-Language Pathologists and Audiologists, § 17-100-101 et seq., or persons licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.

History. Acts 1973, No. 10, § 1; A.S.A. 1947, § 83-1001; Acts 2003, No. 1455, § 1.

Cross References. Eye examinations for blind persons in need, § 20-76-419.

20-77-507. List of ocular practitioners.

(a) When expending public money for any purpose involving human eye examinations or the care of vision or examinations for the correction or relief of any visual or muscular anomaly of the eye, any state board, agency, commission, department, or political subdivision, or any employee or member thereof, created or existing under the Arkansas Constitution or by act of the General Assembly, including public schools or other state agencies and their employees or any governmental employees who, in the performance of duty, are responsible for such expenditures, when informing a person eligible for an eye examination or a vision examination or for an examination for the correction of any visual or muscular anomaly of the eye, shall under no circumstances give, tell, or inform the eligible person by direct or indirect reference or suggestion, the name, address, or classification of any ocular practitioner, except that the eligible person shall be furnished one (1) printed list only of all ocular practitioners, with the office address of each, practicing within the State of Arkansas.

(b) The list shall be broken down by counties and shall list ocular practitioners in alphabetical order by county and shall show the county in which the ocular practitioner designates that he or she maintains his or her principal office.

(c) The name of the ocular practitioner shall appear only one (1) time on the list and shall show only his or her name, principal office address, and the classification or designation M.D. or O.D. or D.O., as the case may be, after each name and nothing else.

(d)(1) It shall be the duty of the Department of Human Services or its successors to prepare and revise the list from time to time but not less often than each six (6) months.

(2) The revised list shall be filed with the Secretary of State on March 31 and September 30 of each year.

(3) No public employee shall furnish any list or inform any person who is eligible for public money by direct or indirect reference or suggestion the name, address, or classification of any ocular practitioner until the list is on file with the Secretary of State and then only in accordance with the provisions of this subchapter.

(e) The list shall show only the names of those ocular practitioners who request the department to place his or her name upon the list. Once the name of the ocular practitioner is upon this list, no further request from the ocular practitioner shall be necessary. The name of any ocular practitioner shall be removed from the list upon his or her written request to the department.

(f) The eligible person shall be free to choose any ocular practitioner from the list regardless of the person's place of residence or the location of the office of the ocular practitioner.

20-77-508. Recommendation of individual practitioner unlawful and nuisance.

The recommendation or naming of any particular ocular practitioner or group of ocular practitioners, professional association or firm, corporation, or association by any state employee or member of any state board, commission, department, political subdivision, or public school employee engaged in the expenditure of public money for eye examinations or vision examinations is declared to be an unlawful act and a public nuisance.

History. Acts 1973, No. 10, § 4; A.S.A. 1947, § 83-1004.

SUBCHAPTER 6 — UNINSURED CHILDREN’S PROGRAM

SECTION.

20-77-601 — 20-77-607. [Repealed.]

20-77-601 — 20-77-607. [Repealed.]

Publisher’s Notes. This subchapter, concerning an uninsured children’s program, was repealed by Acts 1997, No. 407, § 5. The subchapter was derived from the following sources:

- 20-77-601. Acts 1989, No. 471, § 1.
- 20-77-602. Acts 1989, No. 471, § 2.
- 20-77-603. Acts 1989, No. 471, § 3.

- 20-77-604. Acts 1989, No. 471, § 4.
- 20-77-605. Acts 1989, No. 471, § 6.
- 20-77-606. Acts 1989, No. 471, § 5.
- 20-77-607. Acts 1989, No. 471, § 7.

As to the ARKids First Program, see the ARKids First Program Act, § 20-77-1101 et seq.

SUBCHAPTER 7 — SPECIAL NEEDS TRUST REVOLVING FUND

SECTION.

- 20-77-701. Legislative intent.
- 20-77-702. Definitions.
- 20-77-703. Creation of Special Needs Trust Revolving Fund.
- 20-77-704. Payment of trust funds.
- 20-77-705. Conditions for benefits — Changes in benefits.
- 20-77-706. Waiver of physician-patient privilege — Examinations and reports.

SECTION.

- 20-77-707. Application forms — Cooperation by applicant.
- 20-77-708. Confidential information.
- 20-77-709. Powers of cotrustees of Special Needs Trust Revolving Fund — Logistical support.
- 20-77-710. Annual report of cotrustees of Special Needs Trust Revolving Fund.

Effective Dates. Acts 1993, No. 1228, § 5: Apr. 20, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly of the State of Arkansas that the Medicaid eligibility laws of this state are in immediate need of amendment to comply with federal requirements and assure that otherwise ineligible individuals are prevented from

artificially impoverishing themselves to receive benefits to which they are not otherwise entitled and to facilitate recovery of improperly obtained benefits and assure the fiscal integrity of the funds appropriated for Medicaid and this Act is necessary to accomplish that purpose. Therefore, an emergency is hereby declared to exist and this Act being immedi-

ately necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.”

20-77-701. Legislative intent.

It is the intent of the General Assembly to provide a method of assisting those persons within the state who as a result of personal injury, disability, or other medical condition are in need of supplemental benefits to improve or maintain reasonable quality-of-life standards. To this end, it is the further intent of the General Assembly to provide benefits in the amount of expenses actually incurred to satisfy those special needs. Furthermore, the cotrustees of the Special Needs Trust Revolving Fund shall have, in addition to those powers and duties set forth in this subchapter, all powers and duties authorized, imposed, or conferred by law upon cotrustees of the fund.

History. Acts 1993, No. 1228, § 1.

20-77-702. Definitions.

As used in this subchapter:

(1) “Allowable expense” means charges incurred for needed products, services, and accommodations, including, but not limited to, medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care;

(2) “Beneficiary” means a natural person who has sustained injury, is wholly or partially disabled or suffers from medical conditions, and is dependent for care or support;

(3) “Claimant” means any of the following persons applying for reparations under this subchapter:

(A) A beneficiary;

(B) A dependent of a beneficiary; and

(C) A person authorized to act on behalf of any of the persons enumerated in subdivisions (3)(A) and (B) of this section;

(4) “Collateral source” means a source of benefits or advantages for economic loss for which the claimant would otherwise be eligible to receive under this subchapter which the claimant has received, or which is readily available to the claimant, from any one (1) or more of the following:

(A) State required temporary nonoccupational disability insurance;

(B) Workers’ compensation;

(C) Wage continuation programs of any employer;

(D) Proceeds of a contract of insurance payable to the claimant for loss which the beneficiary sustained; or

(E) A contract providing services or benefits for disability;

(5) “Contributing beneficiary” means a beneficiary who has contributed funds to the Special Needs Trust Revolving Fund;

(6) “Cotrustees of the Special Needs Trust Revolving Fund” shall mean:

(A) The Department of Human Services; and

(B) A federally insured bank, savings bank, or safe deposit or trust company authorized by law to do business as such, which shall be selected by the department. The department shall have the authority to choose a new cotrustee under this subdivision (6) at its discretion;

(7) “Economic loss” means monetary detriment consisting only of allowable expense and replacement services loss;

(8) “Grantor” means the individual, institution, or entity that established, created, or funded the trust and shall also include fiduciaries as defined by § 28-69-201 and third parties as contemplated by § 20-77-301 et seq.;

(9) “Noneconomic detriment” means inconvenience, physical impairment, and nonpecuniary damage;

(10) “Replacement services loss” means expenses reasonably incurred in obtaining ordinary and necessary services; and

(11) “Trust” means a trust, or similar legal device, established other than by will by an individual or an individual’s spouse under which the individual may be a beneficiary of all or part of the payments from the trust, and the distribution of such payments is determined by one (1) or more trustees or other fiduciaries who are permitted to exercise any discretion with respect to the distribution to the individual. The term “trust” shall include trusts, conservatorships, and estates created pursuant to the administration of a guardianship.

History. Acts 1993, No. 1228, § 1.

20-77-703. Creation of Special Needs Trust Revolving Fund.

(a) There is created in the State Treasury a revolving fund to be designated the “Special Needs Trust Revolving Fund”. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:

(1) All moneys received from those individuals who desire to establish or maintain eligibility for benefits under the medical assistance program but who possess income or resources, including funds recovered from third parties, in excess of the established federal eligibility requirements, and the consideration for divestiture of income and resources shall be presumed to be for adequate and fair compensation; and

(2) All moneys received by the cotrustees of the Special Needs Trust Revolving Fund from any other source, including moneys received from any state, federal, or private source.

(b) All interest earned as a result of investing moneys in the fund shall be paid into the fund and not into the general revenues of this state. All moneys accruing to the credit of the fund are appropriated and may be budgeted and expended by cotrustees for the purpose of implementing the provisions of this subchapter. If the cotrustees do not

agree about the payment of any benefit or benefits, the determination of the Department of Human Services shall be binding.

History. Acts 1993, No. 1228, § 1.

20-77-704. Payment of trust funds.

(a) The cotrustees of the Special Needs Trust Revolving Fund are hereby given complete discretion as to the expenditure of principal and income of the Special Needs Trust Revolving Fund for the purposes set forth in this subchapter, not to exceed all of the income earned by the fund annually and no more than ten percent (10%) of the principal of the fund. All income not expended annually shall become a part of and be added to the principal of the fund. The expenditures from the fund shall be subject to § 20-77-705 and shall have the following priorities:

(1) Each claimant who is also a contributing beneficiary shall be deemed to have priority as to distribution of his or her share of the principal and the income earned by his or her share of the fund; and

(2) Any of the share of principal or income of the contributing beneficiary not expended for the contributing beneficiary plus all expenditure of principal and income as allowed above which are not designated for any contributing beneficiary may be expended for any other claimant.

(b)(1) The cotrustees shall keep a current account balance for each contributing beneficiary's fund, with the balance to be reduced by all expenditures for that contributing beneficiary whether out of the fund or from any collateral source until the balance reaches zero dollars (\$0.00).

(2) Should the contributing beneficiary die before his or her balance reaching zero dollars (\$0.00), the balance shall be paid to the estate of the deceased contributing beneficiary.

(c) When a contributing beneficiary's account balance as described in subsection (b) of this section reaches zero dollars (\$0.00), the contributing beneficiary shall be treated as any other claimant for purposes of receiving benefits from this fund. In addition to the annual accounting as required by § 20-77-108, the cotrustees shall notify a contributing beneficiary when his or her account balance reaches zero dollars (\$0.00).

(d) A benefit shall not be subject to execution, attachment, garnishment, or other process, except that benefits for allowable expenses shall not be exempt from a creditor to the extent that the creditor has provided products, services, or accommodations, the costs of which are included in the benefit.

(e) An assignment by the claimant to any future benefit under the provisions of this subchapter is unenforceable, except an assignment of any benefit for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or disability on which the claim is based and are provided or are to be provided by the assignee.

History. Acts 1993, No. 1228, § 1.

20-77-705. Conditions for benefits — Changes in benefits.

(a) Benefits shall not be awarded:

(1) Unless the claim has been filed with the cotrustees of the Special Needs Trust Revolving Fund after the injury, disability, or medical condition exists; or

(2) If any governmental entitlement or insurance program provides comparable benefits to persons eligible to participate in those programs.

(b) Benefits otherwise payable to a beneficiary shall be diminished to the extent that the economic loss is recouped from collateral sources and retained by the beneficiary or claimant.

(c) In determining eligibility for benefits from the Special Needs Trust Revolving Fund, the cotrustees shall apply the same eligibility standards as those then in effect for assistance under the state medical assistance program.

(d) In the event that the fund results in a contributing beneficiary's being declared ineligible for state medical assistance payments, the contributing beneficiary may elect:

(1) To take no action;

(2) To withdraw from the fund, whereupon the contributing beneficiary shall be entitled to the unexpended portion of his or her contribution; or

(3) To continue to participate in the fund and be eligible for benefits from the fund, but to relinquish any other interest in the fund, including any right the contributing beneficiary or the contributing beneficiary's estate may have had to any unexpended portion of the beneficiary's contribution. Any such relinquishment shall be deemed to have been made for adequate consideration.

History. Acts 1993, No. 1228, § 1.

20-77-706. Waiver of physician-patient privilege — Examinations and reports.

(a) Any person filing a claim under the provisions of this subchapter shall be deemed to have waived any physician-patient privilege as to communications or records relevant to an issue of the physical, mental, or emotional conditions of the claimant.

(b) If the mental, physical, or emotional condition of a claimant is material to a claim, upon good cause shown, the cotrustees of the Special Needs Trust Revolving Fund may order the claimant to submit to a mental or physical examination. The order shall specify the time, place, manner, conditions, and scope of the examination and the person by whom it is to be made. The order shall also require the person to file a detailed written report of the examination with the cotrustees. The report shall set out the findings of the person making the report,

including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions.

(c) The cotrustees shall furnish to the beneficiary a copy of any reports examined.

(d) The cotrustees may require the claimant to supply any additional medical or psychological reports available relating to the injury or death for which reparations are claimed.

History. Acts 1993, No. 1228, § 1.

20-77-707. Application forms — Cooperation by applicant.

Each local office of the Department of Human Services shall keep application forms prepared and provided by the cotrustees of the Special Needs Trust Revolving Fund and make them available to any person upon request.

History. Acts 1993, No. 1228, § 1.

20-77-708. Confidential information.

The following information, when submitted to the cotrustees of the Special Needs Trust Revolving Fund as part of an application, shall be confidential:

(1) Documents submitted by a claimant which relate to medical treatment; and

(2) Investigative reports, if confidential under any other law.

History. Acts 1993, No. 1228, § 1.

20-77-709. Powers of cotrustees of Special Needs Trust Revolving Fund — Logistical support.

(a)(1)(A) The cotrustees of the Special Needs Trust Revolving Fund shall have the power to award benefits if satisfied by a preponderance of the evidence that the requirements for benefits have been met.

(B) The cotrustees shall have authority to award the benefits either to the claimant or directly to the provider of services.

(2) The cotrustees shall hear and determine all matters relating to claims for benefits, including the power to reopen claims without regard to statutes of limitation.

(3) The cotrustees shall have the power to subpoena witnesses, compel their attendance, require the production of records and other evidence, administer oaths or affirmations, conduct hearings, and receive relevant information regarding any claim.

(4) The cotrustees shall be provided such office, support staff, and secretarial services as are deemed necessary, and the reasonable costs of administration of the trust shall be borne by the trust.

(b) In addition to any other powers and duties specified elsewhere in this subchapter, the cotrustees may:

- (1) Regulate the fund’s own procedure except as otherwise provided in this subchapter;
- (2) Adopt rules and regulations to implement the provisions of this subchapter;
- (3) Define any term not defined in this subchapter;
- (4) Prescribe forms necessary to carry out the purposes of this subchapter;
- (5) Request access to any reports of investigations or other data necessary to assist the cotrustees in making a determination of eligibility for benefits under the provisions of this subchapter;
- (6) Take notice of general, technical, and scientific facts within their specialized knowledge; and
- (7) Publicize the availability of benefits and information regarding the filing of claims therefor.

History. Acts 1993, No. 1228, § 1.

20-77-710. Annual report of cotrustees of Special Needs Trust Revolving Fund.

The cotrustees of the Special Needs Trust Revolving Fund shall prepare and transmit annually a report of their activities to the Director of the Department of Human Services. This report shall include the amount of benefits paid and a statistical summary of claims and benefits made and denied.

History. Acts 1993, No. 1228, § 1.

SUBCHAPTER 8 — HOME INTRAVENOUS DRUG THERAPY SERVICES

SECTION.	SECTION.
20-77-801. Definitions.	20-77-805. Administration of medication.
20-77-802. Medicaid payment.	20-77-806. Sales and delivery.
20-77-803. Physician clinical management fees.	20-77-807. Sanctions.
20-77-804. Limitation on acceptance of and payments for certain referrals.	20-77-808. Exclusion.

Effective Dates. Acts 1993, No. 918, § 11: Apr. 7, 1993. Emergency clause provided: “It is hereby found and determined by the General Assembly that the medicaid program is suffering severe financial strain; that this act would provide substantial relief to medicaid expenditures through authorizing home intravenous drug therapy services; and this act should go into effect immediately in order to grant needed relief to the medicaid program. Therefore and emergency is hereby declared to exist and this act being neces-

sary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”
Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation

Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also be effective on July 1, 2003. Therefore, an emergency is

declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

20-77-801. Definitions.

As used in this subchapter:

(1)(A) “Home intravenous drug therapy services” means the items and services described in subdivision (1)(B) of this section furnished to an individual who is under the care of a physician in a place of residence used as the individual’s home, by a qualified home intravenous drug therapy provider, and under a plan established and periodically reviewed by a physician.

(B) “Home intravenous drug therapy services” includes pharmacy and related services, including medical supplies, intravenous fluids, and equipment used in administering intravenous fluids as are necessary to conduct safely and effectively an intravenous-administered drug regimen;

(2) “Qualified pharmacy home intravenous drug therapy provider” means any entity that the Arkansas State Board of Pharmacy determines meets the following requirements:

(A) Is capable of providing home intravenous drug therapy services;

(B) Makes services available, as needed, seven (7) days a week on a twenty-four-hour basis;

(C) Adheres to the appropriate written protocols and policies with respect to the provision of items and services;

(D) Maintains clinical records on all patients;

(E) Coordinates all services with the patient’s physician;

(F) Maintains patient records as to frequency of nursing visits, certificate of medical necessity from the attending physician, progress reports on the patient, and a patient care plan;

(G) Conducts a quality assessment and assurance program, including drug regimen review and coordination of patient care;

(H) Provides sterile compounding of intravenous drugs in an atmosphere which contains less than one thousand (1,000) particles 0.5 microns or larger in diameter per cubic foot of air and positive air flow. Clean air hoods must be certified at least annually;

(I) Performs stringent quality control procedures, including complete sterile compounding records of drug lot number, expiration date, quantity used, and a copy of the label attached to the final compounded product;

(J) Is licensed by the board; and

(K) Meets other requirements as the board may determine are necessary to assure the safe and effective provision of home intravenous drug therapy services and the efficient administration of home intravenous drug therapy; and

(3) "Referring physician" means, with respect to providing home intravenous drug therapy services to an individual, a physician who:

- (A) Prescribed the home intravenous drug for which the services are to be provided; and
- (B) Established the plan of care for the services.

History. Acts 1993, No. 918, § 1; 2003, No. 1473, § 45.

20-77-802. Medicaid payment.

(a) The Medicaid payment shall not exceed an amount equal to the lesser of the qualified provider's usual and customary charges for such services or the reimbursement schedule established under subsection (b) of this section when determined medically necessary by the Arkansas Medicaid Program.

(b)(1) The Department of Human Services shall establish a reimbursement schedule for the following:

- (A) Home intravenous antibiotics;
- (B) Chemotherapy;
- (C) Pain management;
- (D) Total parenteral nutrition; and
- (E) Other home intravenous therapies.

(2) A reimbursement schedule established under this section shall be on a per diem basis.

(3) Service per diem rates shall include the following:

- (A) Pharmacy sterile compounding fees;
- (B) Intravenous pole, infusion pumps, and pump cassettes;
- (C) All required intravenous supplies such as syringes, tubing, catheter care kits, etc.; and
- (D) Other related services necessary for home intravenous drug services.

(4) The Medicaid reimbursement shall be the average wholesale cost of drug and solution plus a service per diem not to exceed the fortieth percentile of average daily Medicaid per diem to Arkansas hospitals, or the usual and customary reimbursement, whichever is lower.

(c) Reimbursement under this section shall not be subject to the Medicaid pharmacy benefits limits.

History. Acts 1993, No. 918, § 2.

20-77-803. Physician clinical management fees.

(a) The referring physician prescribing the home intravenous therapy shall be entitled to Medicaid payment for certain clinical management services determined by the Department of Human Services.

(b) The schedule of physicians' fees for these services shall not exceed on a per diem basis the fortieth percentile of average Medicaid fees paid

to physicians for Arkansas hospital visits, or the usual and customary reimbursement, whichever is lower.

History. Acts 1993, No. 918, § 3.

20-77-804. Limitation on acceptance of and payments for certain referrals.

(a) Except as provided in subsection (b) of this section, no payment for home intravenous drug therapy services shall be made to any provider in which a physician or a physician's immediate family member has an ownership interest in the provider or in any situation where the physician receives compensation from the provider to induce referrals.

(b) Exceptions:

(1) Subsection (a) of this section does not apply if the ownership interest is the ownership of stock which is traded over a publicly regulated exchange and was purchased on terms generally available to the public;

(2) Subsection (a) of this section does not apply if the compensation is reasonably related to items or services actually provided by the physician and does not vary in proportion to the number of referrals made by the referring physicians, but such exception does not apply to compensation provided for direct patient care services; and

(3) Subsection (a) of this section is not to be construed to apply to a referring physician whose only ownership or financial relationship with the provider is as an uncompensated officer or director of the provider.

History. Acts 1993, No. 918, § 4.

20-77-805. Administration of medication.

When the home intravenous drug therapy medication must be administered by a licensed healthcare professional, the administration of this medication shall be provided by a licensed home health agency.

History. Acts 1993, No. 918, § 2.

20-77-806. Sales and delivery.

No person or entity shall sell intravenous drugs in this state or deliver the same into this state through the United States mail or a private carrier unless licensed by the Arkansas State Board of Pharmacy.

History. Acts 1993, No. 918, § 6.

20-77-807. Sanctions.

No payment may be made under this subchapter for home intravenous drug therapy service which is provided in violation of this subchapter or which jeopardizes federal financial participation.

History. Acts 1993, No. 918, § 5.

20-77-808. Exclusion.

The provisions of this subchapter shall not be deemed to grant the Arkansas State Board of Pharmacy any authority to regulate the practice of nursing in this state, and the practicing of nursing in this state shall remain the sole responsibility of the Arkansas State Board of Nursing pursuant to the Nurse Practices Act, § 17-87-101 et seq.

History. Acts 1993, No. 918, § 7.

SUBCHAPTER 9 — MEDICAID FRAUD FALSE CLAIMS ACT

SECTION.

- 20-77-901. Definitions.
- 20-77-902. Liability for certain acts.
- 20-77-903. Civil penalties.
- 20-77-904. Investigation by Attorney General.
- 20-77-905. Order compelling testimony or production of evidence — Immunity — Contempt.
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SECTION.

- 20-77-907. Records.
- 20-77-908. False claims jurisdiction — Procedure.
- 20-77-909. Injunctions against fraud.
- 20-77-910. Suspension of violators.
- 20-77-911. Persons providing information regarding Medicaid fraud — Rewards.

Effective Dates. Acts 1993, No. 1299, § 16: Apr. 23, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Attorney General and the prosecuting attorneys are in need of specific legislation by which to eliminate fraud in the Arkansas Medicaid Program and that immediate passage of this act is necessary to protect the integrity of the program. Therefore, an emergency is hereby declared to exist, and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1210, § 5: Apr. 11, 1995. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the laws of Arkansas need to be strengthened in order to combat fraud in the Arkansas Medicaid program and that this act is neces-

sary to protect the integrity of the Medicaid program. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 2003, No. 1163, § 2: Apr. 8, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Medicaid Fraud False Claims Act is in immediate need of these revisions to clarify an ambiguity in the law; that the provisions of this act are essential to the successful operation and activities of the Medicaid Fraud Control Unit and the Department of Human Services. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is

neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2003.”

Acts 2011, No. 1154, § 3: Apr. 4, 2011. Emergency clause provided: “It is found

and determined by the General Assembly of the State of Arkansas that the statutes authorizing procedures for the recovery of false or fraudulent Medicaid claims are in immediate need of this revision to encourage citizens of the state to help recover public funds and Medicaid moneys that have been wrongfully misappropriated and will otherwise be lost forever; and that the provisions of this act are essential to successful operations and activities of the Medicaid Fraud Control Unit of the Attorney General’s office and the Department of Human Services. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

20-77-901. Definitions.

As used in this subchapter:

(1) “Arkansas Medicaid Program” means the program authorized under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., that provides for payments for medical goods or services on behalf of indigent families with dependent children and of aged, blind, or disabled individuals whose income and resources are insufficient to meet the cost of necessary medical services, including all transactions through the actual delivery of healthcare goods or services to a Medicaid recipient regardless of whether the healthcare goods or services are paid for directly by the Department of Human Services or indirectly through a fiscal agent, contractor, subcontractor, risk-based provider organization, managed care organization, or individual;

(2)(A) “Claim” means any request or demand for money or property, regardless of whether under a contract, that:

(i) Is presented to an officer, employee, agent, or fiscal agent of the Arkansas Medicaid Program; and

(ii) Is made to a contractor, grantee, or other recipient if:

(a) The money or property is spent or used on behalf of the Arkansas Medicaid Program or to advance the Arkansas Medicaid Program or its interest; and

(b) The Arkansas Medicaid Program:

(1) Provides or has provided any portion of the money or property requested or demanded; or

(2) Is reimbursing the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

(B) "Claim" includes:

(i) Billing documentation;

(ii) All documentation required to be created or maintained by law or rule to justify, support, or document the delivery of healthcare goods or services to a Medicaid recipient;

(iii) All documentation submitted to justify or help establish a unit rate, capitated rate, or other method of determining what is to be paid for healthcare goods or services delivered to Medicaid recipients; and

(iv) All transactions in payment for healthcare goods or services delivered or claimed to have been delivered to Medicaid recipients under the Arkansas Medicaid Program regardless of whether the State of Arkansas has title to the money or property or has transferred responsibility for delivering healthcare services to another legal entity;

(3) "Damages" means the actual loss to the Arkansas Medicaid Program and its fiscal agents, including the total amount of all claims paid as a result of any false claim and the value of healthcare goods or services paid for but not delivered to a Medicaid recipient;

(4) "Fiscal agent" means any individual, firm, corporation, professional association, partnership, organization, risk-based provider organization, managed care organization, or other legal entity that receives, processes, or pays claims for the delivery of healthcare goods and services to Medicaid recipients under the Arkansas Medicaid Program;

(5)(A) "Knowing" or "knowingly" means that the person has actual knowledge of the information or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information.

(B) "Knowing" or "knowingly" does not require proof of a specific intent to defraud;

(6) "Managed care organization" means a health insurer, Medicaid provider, or other business entity authorized by state law or through a contract with the state to receive a fixed or capitated rate or fee to manage all or a portion of the delivery of healthcare goods or services to Medicaid recipients;

(7) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property;

(8)(A) "Medicaid provider" means a person, business organization, risk-based provider organization, or managed care organization that delivers, purports to deliver, or arranges for the delivery of healthcare goods or services to a Medicaid recipient under the Arkansas Medicaid Program.

(B) "Medicaid provider" includes an employee, agent, representative, contractor, or subcontractor of a person, business organization, risk-based provider organization, or managed care organization;

(9) "Medicaid recipient" means any individual on whose behalf any person claimed or received any payment or payments from the Arkansas Medicaid Program or its fiscal agents, whether or not the individual was eligible for benefits under the Arkansas Medicaid Program;

(10) "Obligation" means an established duty arising from:

(A) An express or implied contract, grantor-grantee, or licensor-licensee relationship;

(B) A fee-based or similar relationship;

(C) State law or rule;

(D) Federal law or regulation; or

(E) Retention of any overpayment not returned within sixty (60) days from the date of discovery by the provider;

(11) "Person" means any:

(A) Medicaid provider of goods or services or any employee, independent contractor, or subcontractor of the Medicaid provider, whether that provider be an individual, individual medical vendor, firm, corporation, professional association, partnership, organization, risk-based provider organization, managed care organization, or other legal entity; or

(B) Individual, individual medical vendor, firm, corporation, professional association, partnership, organization, risk-based provider organization, managed care organization, or other legal entity, or any employee of any individual, individual medical vendor, firm, corporation, professional association, partnership, organization, risk-based provider organization, managed care organization, or other legal entity, not a Medicaid provider under the Arkansas Medicaid Program but that provides goods or services to a Medicaid provider under the Arkansas Medicaid Program for which the Medicaid provider submits claims to the Arkansas Medicaid Program or its fiscal agents; and

(12)(A) "Records" means all documents in any form that disclose the nature, extent, and level of healthcare goods and services provided to Medicaid recipients.

(B) "Records" includes X-rays, magnetic resonance imaging scans, computed tomography scans, computed axial tomography scans, and other diagnostic imaging commonly used and retained as part of the medical records of a patient.

History. Acts 1993, No. 1299, § 1; 1999, No. 1544, § 6; 2003, No. 1473, § 46; 2017, No. 978, § 9.

Amendments. The 2017 amendment added the definitions of "Damages", "Managed care organization", "Material", "Medicaid provider", and "Obligation" and redesignated the remaining subdivisions accordingly; in (1), substituted "42 U.S.C. § 1396 et seq., that provides" for "which provides" and added "including all trans-

actions . . . or individual"; rewrote (2); in (4), inserted "risk-based provider organization, managed care organization" and substituted "that receives, processes, or pays claims for the delivery of healthcare goods and services to Medicaid recipients" for "which, through a contractual relationship with the department, the State of Arkansas receives, processes, and pays claims"; added the (A) and (B) designations in (5); and rewrote (11) and (12).

20-77-902. Liability for certain acts.

A person shall be liable to the State of Arkansas, through the Attorney General, for a civil penalty of three (3) times the amount of the damages if he or she:

(1) Knowingly makes or causes to be made any false statement or representation of a material fact in any claim, request for payment, or application for any benefit or payment under the Arkansas Medicaid Program;

(2) Knowingly makes or causes to be made any omission or false statement or representation of a material fact for use in determining rights to a benefit or payment under the Arkansas Medicaid Program;

(3) Having knowledge of the occurrence of any event affecting his or her initial or continued right to any benefit or payment or the initial or continued right to any benefit or payment of any other individual in whose behalf he or she has applied for or is receiving a benefit or payment, knowingly conceals or fails to disclose that event with an intent fraudulently to secure the benefit or payment either in a greater amount or quantity than is due or when no benefit or payment is authorized;

(4) Having made or submitted a claim, request for payment, or application to receive any benefit or payment for the use and benefit of another person and having received it, knowingly converts the benefit or payment or any part thereof to a use other than for the use and benefit of the other person;

(5) Knowingly presents or causes to be presented a claim for a physician's service for which payment may be made under the Arkansas Medicaid Program and knows that the individual who furnished the service was not licensed as a physician;

(6) Knowingly solicits or receives any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind:

(A) In return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under the Arkansas Medicaid Program; or

(B) In return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under the Arkansas Medicaid Program;

(7)(A) Knowingly offers or pays any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind to any person to induce the person to:

(i) Refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under the Arkansas Medicaid Program; or

(ii) Purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which

payment may be made in whole or in part under the Arkansas Medicaid Program.

(B) Subdivision (7)(A) of this section shall not apply to:

(i) A discount or other reduction in price obtained by a provider of services or other entity under the Arkansas Medicaid Program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under the Arkansas Medicaid Program;

(ii) Any amount paid by an employer to an employee who has a bona fide employment relationship with the employer for employment in the providing of covered items or services;

(iii) Any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under the Arkansas Medicaid Program, if:

(a) The person has a written contract with each individual or entity which specifies the amount to be paid to the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each individual or entity under the contract; and

(b) In the case of an entity that is a Medicaid provider as defined in § 20-77-901, the person discloses, in the form and manner as the Director of the Department of Human Services requires, to the entity and upon request to the director the amount received from each vendor with respect to purchases made by or on behalf of the entity; or

(iv) Any payment practice specified by the director promulgated pursuant to applicable federal or state law;

(8) Knowingly makes or causes to be made or induces or seeks to induce any omission or false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or Medicaid provider in order that the institution, facility, or Medicaid provider may qualify to obtain or maintain any licensure or certification when the licensure or certification is required to be enrolled or eligible to deliver any healthcare goods or services to Medicaid recipients by state law, federal law, or the rules of the Arkansas Medicaid Program;

(9) Knowingly:

(A) Charges for any service provided to a patient under Arkansas Medicaid Program money or other consideration at a rate in excess of the rates established by the state; or

(B) Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under the Arkansas Medicaid Program, any gift, money, donation, or other consideration other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient:

(i) As a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities; or

(ii) As a requirement for the patient's continued stay in the hospital, nursing facility, or intermediate care facility for individuals with intellectual disabilities when the cost of the services provided therein to the patient is paid for in whole or in part under the Arkansas Medicaid Program;

(10) Knowingly makes or causes to be made any omission or false statement or representation of a material fact in any application for benefits or for payment in violation of the rules, regulations, and provider agreements issued by the Arkansas Medicaid Program or its fiscal agents;

(11) Knowingly:

(A) Participates, directly or indirectly, in the Arkansas Medicaid Program after having pleaded guilty or nolo contendere to or been found guilty of a charge of Medicaid fraud, theft of public benefits, or abuse of adults as defined in the Arkansas Criminal Code, § 5-1-101 et seq.; or

(B) As a certified health provider enrolled in the Arkansas Medicaid Program pursuant to Title XIX of the Social Security Act or the fiscal agent of such a provider who employs, engages as an independent contractor, engages as a consultant, or otherwise permits the participation in the business activities of such a provider, any person who has pleaded guilty or nolo contendere to or has been found guilty of a charge of Medicaid fraud, theft of public benefits, or abuse of adults as defined in the Arkansas Criminal Code, § 5-1-101 et seq.;

(12) Knowingly submits any false documentation supporting a claim or prior payment to the Office of Medicaid Inspector General or the Medicaid Fraud Control Unit within the office of the Attorney General during an audit or in response to a request for information or a subpoena;

(13) Knowingly makes or causes to be made, or induces or seeks to induce, any material false statement to the Office of Medicaid Inspector General or the Medicaid Fraud Control Unit within the office of the Attorney General during an audit or in response to a request for information or a subpoena;

(14) Knowingly forges the signature of a doctor or nurse on a prescription or referral for healthcare goods or services or submits a forged prescription or referral for healthcare goods or services in support of a claim for payment under the Arkansas Medicaid Program;

(15) Knowingly places a false entry in a medical chart or medical record that indicates that healthcare goods or services have been provided to a Medicaid recipient knowing that the healthcare goods or services were not provided;

(16) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval to the Arkansas Medicaid Program;

(17) Knowingly makes, uses, or causes to be made or used a false record or statement that is material to a false or fraudulent claim to the Arkansas Medicaid Program;

(18) Knowingly:

(A) Makes, uses, or causes to be made or used a false record or statement that is material to an obligation to pay or transmit money or property to the Arkansas Medicaid Program; or

(B) Conceals or improperly avoids or decreases an obligation to pay or transmit money or property to the Arkansas Medicaid Program; or

(19) Conspires to commit a violation of this section.

History. Acts 1993, No. 1299, § 2; 2003, No. 1163, § 1; 2017, No. 978, § 9.

Amendments. The 2017 amendment substituted “of three (3) times the amount of the damages” for “and restitution” in the introductory language; inserted “claim, request for payment, or” in (1); in (2), substituted “Knowingly” for “At any time knowingly”, inserted “omission or”, and added “under the Arkansas Medicaid Program”; in (4), inserted “or submitted a claim, request for payment, or” and substituted “another person” for “another”; substituted “to the person” for “the per-

son” in (7)(B)(iii)(a); substituted “Medicaid provider” for “provider of services” in (7)(B)(iii)(b); rewrote (8); redesignated former (9)(B) as the present introductory language of (9)(B), (9)(B)(i) and (ii); in (9)(B)(ii), inserted “hospital, nursing” and “or intermediate care facility for individuals with intellectual disabilities”; inserted “omission or” in (10); added (12) through (19); and made stylistic changes.

U.S. Code. Title XIX of the Social Security Act, referred to in this section, is codified as 42 U.S.C. § 1396 et seq.

RESEARCH REFERENCES

Ark. L. Rev. Mark James Chaney, Recent Developments: Arkansas Supreme Court Holds FDA Warning Letters Regarding Drug Labeling Are Inadmissible Hearsay and All Government Reports Are Per Se Unfairly Prejudicial for Purpose of Fact-Finding Under Arkansas Rules of Evidence; and MFCCA’s Provision on False and Misleading Statements Only

Applies to Statements Made During Certification Proceedings, 67 Ark. L. Rev. 509 (2014).

U. Ark. Little Rock L. Rev. Survey of Legislation, 2003 Arkansas General Assembly, Public Health and Welfare, Medicaid Fraud Conviction, 26 U. Ark. Little Rock L. Rev. 465.

CASE NOTES

In General.

Impropriety requirement for tortious interference was not satisfied by the health services company’s violation of the federal anti-kickback statute, 42 U.S.C. § 1320a-7b(b), and comparable Arkansas statutes, the Arkansas Medicaid Fraud Act, § 5-55-111, and the Arkansas Medicaid Fraud False Claims Act, § 20-77-902; even though the company’s policy, which denied privileges to doctors who acquired or held an interest in a competitor hospital, created a disincentive for the doctors to maintain ownership in a competing hospital, the policy did not create a disincentive for them to refer their patients to facilities other than the company’s hospitals. *Baptist Health v. Murphy*, 365 Ark. 115, 226 S.W.3d 800 (2006).

Reading this section as one sentence, the subsection provides that a person shall be liable to the State of Arkansas, through the Attorney General, for a civil penalty and restitution if he knowingly makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify either upon initial certification or upon re-certification as a hospital, rural primary care hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity for which certification is required or with respect to information required pur-

suant to applicable federal and state law, rules, regulations and provider agreements. *Ortho-McNeil-Janssen Pharms., Inc. v. State*, 2014 Ark. 124, 432 S.W.3d 563 (2014).

State's claim against the antipsychotic medication developer under the Arkansas Medicaid Fraud False Claims Act was

dismissed because the developer was indisputably not a healthcare facility and applying for certification or re-certification as described in this section and therefore the statute did not apply. *Ortho-McNeil-Janssen Pharms., Inc. v. State*, 2014 Ark. 124, 432 S.W.3d 563 (2014).

20-77-903. Civil penalties.

(a) It shall be unlawful for any person to commit any act proscribed by § 20-77-902, and any person found to have committed any such act or acts shall be deemed liable to the State of Arkansas, through the Attorney General, for:

(1) A civil penalty of not less than five thousand five hundred dollars (\$5,500) or more than eleven thousand dollars (\$11,000) for each claim; and

(2) Three (3) times the amount of damages that the state sustained because of the act of the person.

(b) The trier of fact may assess not less than two (2) times the amount of damages that the state sustained because of the act of the person if the trier of fact finds the following:

(1) The person committing the violation of this subchapter furnished officials of the Attorney General's office with all information known to the person about the violation within thirty (30) days after the date on which the defendant first obtained the information; and

(2) The person fully cooperated with any Attorney General's investigation of the violation, and at the time the person furnished the Attorney General with the information about the violation:

(A) No criminal prosecution, civil action, or administrative action had commenced under this subchapter with respect to the violation; and

(B) The person did not have actual knowledge of the existence of an investigation into the violation.

(c)(1) In addition to any other penalties authorized herein, any person violating this subchapter shall also be liable to the State of Arkansas for the Attorney General's reasonable expenses, including the cost of investigation, attorney's fees, court costs, witness fees, and deposition fees.

(2) Any cost or reimbursement ordered under this subsection shall be paid to the office of the Attorney General to be used for future Medicaid investigations and cases.

(d) The entirety of any penalty obtained under subsection (a) of this section less reimbursement of investigation and prosecution costs and any reward which may be determined by the court pursuant to this subchapter shall be credited as special revenues of the State of Arkansas and deposited into the Arkansas Medicaid Program Trust Fund for the sole use of the Arkansas Medicaid Program.

(e)(1) A person who engages or has engaged in any act described by § 20-77-902 may be enjoined in a court of competent jurisdiction in an action brought by the Attorney General.

(2) An injunction described by subdivision (e)(1) of this section shall be:

(A) Brought in the name of the state; and

(B) Granted if a case is clearly shown that the rights of the state are being violated by the person and the state will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action or that the acts or omissions of the person will tend to render a final judgment ineffectual.

(f) The court may make orders or judgments, including the appointment of a receiver, as necessary to:

(1) Prevent any act described by § 20-77-902 by any person; or

(2) Restore to the Arkansas Medicaid Program any money or property, real or personal, that may have been acquired by means of an act described by § 20-77-902.

History. Acts 1993, No. 1299, §§ 3, 4; 1995, No. 1210, § 1; 2017, No. 978, § 9.

Amendments. The 2017 amendment rewrote the section.

20-77-904. Investigation by Attorney General.

(a) If the Attorney General has reasonable cause to believe that a person has information or is in possession, custody, or control of any document or other tangible object relevant to an investigation or that would lead to the discovery of relevant information in an investigation for violation of this subchapter, the Attorney General may serve upon the person, before bringing any action in the circuit court, a written demand to appear and be examined under oath, to answer written interrogatories under oath, and to produce the document or object for inspection and copying. The demand shall:

(1) Be served upon the person in the manner required for service of process in the State of Arkansas or by certified mail with return receipt requested;

(2) Describe the nature of the conduct constituting the violation under investigation;

(3) Describe the class or classes of documents or objects with sufficient definiteness to permit them to be fairly identified;

(4) Contain a copy of the written interrogatories;

(5) Prescribe a reasonable time at which the person must appear to testify, a time within which to answer the written interrogatories, and a time within which the document or object must be produced;

(6) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that time;

(7) Specify a place for the taking of testimony or for production and designate a person who shall be custodian of the document or object; and

(8) Contain a copy of subsections (b) and (d) of this section.

(b)(1) If a person objects to or otherwise fails to comply with the written demand served upon him or her under subsection (a) of this section, the Attorney General may file an action in the circuit court for an order to enforce the demand.

(2) Venue for the action to enforce the demand shall be in Pulaski County.

(3) Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as that prescribed in the Arkansas Rules of Civil Procedure.

(4) If the court finds that the demand is proper, that there is reasonable cause to believe there may have been a violation of this subchapter, and that the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand, subject to modifications the court may prescribe.

(c) If the person fails to comply with the order, the court may issue any of the following orders until the person complies with the order:

(1) Adjudging the person in contempt of court and exercising any civil contempt power available under state law;

(2) Granting injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation; or

(3) Granting other relief as the court may deem proper.

(d) The court may award to the Attorney General costs and reasonable attorney's fees as determined by the court against the person failing to obey the order.

(e) Upon motion by the person and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense.

History. Acts 1993, No. 1299, § 5; added "and exercising any civil contempt power available under state law" in (c)(1). 2017, No. 978, § 10.

Amendments. The 2017 amendment

20-77-905. Order compelling testimony or production of evidence — Immunity — Contempt.

(a)(1)(A) In any proceeding or investigation under this subchapter, if a person refuses to answer a question or produce evidence of any kind on the ground that he or she may be incriminated and if the Attorney General or prosecuting attorney requests the court in writing to order the person to answer the question or produce the evidence, the court may make this order, and the person shall comply with the order.

(B) If the court denies the request, the court shall state its reasons for the denial in writing.

(2) After complying, the testimony or evidence or any information directly derived from the testimony or evidence shall not be used

against the person in any proceeding or prosecution of a crime or offense concerning which he or she gave an answer or produced evidence under the court order.

(3) Immunity obtained pursuant to this section does not exempt any person from prosecution, penalty, or forfeiture for any perjury, false swearing, or contempt committed in answering or failing to answer or in producing or failing to produce evidence in accordance with the order.

(b) If a person refuses to testify after being granted immunity and after being ordered to testify as prescribed in subsection (a) of this section, he or she may be adjudged in contempt.

History. Acts 1993, No. 1299, § 6.

20-77-906. Evidence — Disclosure.

(a) If the Attorney General determines that disclosure to the respondent of the evidence relied on to establish reasonable cause is not in the best interests of the investigation, he or she may request that the court examine the evidence in camera. If the Attorney General makes this request, the court may examine the evidence in camera and then make its determination.

(b)(1) Any procedure, testimony taken, or material produced under this section shall be kept confidential by the Attorney General before bringing an action against a person under this subchapter for the violation under investigation unless any of the following applies:

(A) Confidentiality is waived by the person whose testimony is disclosed;

(B) Confidentiality is waived by the person who produced to the Attorney General the material being disclosed;

(C) The testimony or material is disclosed solely to the person, or the person's attorney, who testified or provided the material to the Attorney General; or

(D) Disclosure is authorized by court order.

(2) The Attorney General may disclose the testimony or material to an agency director of the State of Arkansas, of the United States, or of any other state, to the prosecuting attorney, or to the United States Attorney.

(c) An investigator conducting an examination pursuant to this section may exclude from the place of examination any person except the person being examined and the person's counsel.

(d) Nothing in this section shall be construed to limit the Attorney General's authority to access provider records in accordance with existing provisions of the Arkansas Code of 1987 Annotated.

History. Acts 1993, No. 1299, § 5.

20-77-907. Records.

(a)(1) A Medicaid provider or person providing healthcare goods or services under the Arkansas Medicaid Program is required to maintain all records at least for a period of five (5) years from the date of claimed provision of any goods or services to any Medicaid recipient.

(2)(A) The records described in subdivision (a)(1) of this section shall be available for audit during regular business hours at the address listed in the Medicaid provider agreement or where the healthcare goods or services are provided.

(B) Closed records for inactive patients or clients may be maintained in offsite storage if:

(i) The records can be produced within three (3) working days of being served with a request for records, subpoena, or other lawful notice from any agency with authority to audit the records; and

(ii) The records are maintained within the State of Arkansas.

(C) A Medicaid provider shall disclose upon request the location of any offsite storage facility to any agency with authority to audit the records.

(3) If the healthcare goods or services are provided in the home of the Medicaid recipient, the records shall be maintained at the principal place of business of the Medicaid provider.

(4) If a Medicaid provider goes out of business, the provider shall give written notification to the Department of Human Services and the Office of Medicaid Inspector General of where and how the records will be stored.

(b)(1) No potential Medicaid recipient shall be eligible for medical assistance unless he or she has authorized in writing the Director of the Department of Human Services to examine all records of his or her own or of those receiving or having received Medicaid benefits through him or her, whether the receipt of the benefits would be allowed by the program or not, for the purpose of investigating whether any person may have violated this subchapter or for use or potential use in any legal, administrative, or judicial proceeding.

(2) No person shall be eligible to receive any payment from the program or its fiscal agents unless that person has authorized in writing the director to examine all records for the purpose of investigating whether any person may have committed the crime of Medicaid fraud or for use or for potential use in any legal, administrative, or judicial proceeding.

(c) The Attorney General shall be allowed access to all records of persons and Medicaid recipients under the program to which the director has access for the purpose of investigating whether any person may have violated this subchapter or for use or potential use in any legal, administrative, or judicial proceeding.

(d)(1) Records obtained by the director or the Attorney General pursuant to this subchapter shall be classified as confidential information and shall not be subject to outside review or release by any

individual except when records are used or potentially to be used by any governmental entity in any legal, administrative, or judicial proceeding.

(2) Notwithstanding any other law to the contrary, no person shall be subject to any civil or criminal liability for providing access to records to the director, to the Attorney General, or to the prosecuting attorneys.

History. Acts 1993, No. 1299, § 12; 2017, No. 978, § 11.

Amendments. The 2017 amendment, in (a)(1), substituted “A Medicaid provider or person providing healthcare goods or

services” for “All persons” and deleted “at the person’s principal place of Medicaid business” following “required to”; rewrote (a)(2); and added (a)(3) and (a)(4).

20-77-908. False claims jurisdiction — Procedure.

(a) Any action under this subchapter may be brought in Pulaski County Circuit Court or the county where the defendant or, in the case of multiple defendants, any one (1) defendant resides.

(b) A civil action under this section may not be brought more than five (5) years after the date on which the violation of this subchapter is committed.

(c) In any action brought pursuant to this subchapter, the State of Arkansas shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) A subpoena requiring the production of documents or the attendance of a witness at an interview, trial, or hearing conducted under this section may be served by the Attorney General or any duly authorized law enforcement officer in the State of Arkansas personally, telephonically, or by registered or certified mail. In the case of service by registered or certified mail, the return shall be accompanied by the return post office receipt of delivery of the demand.

History. Acts 1993, No. 1299, §§ 7, 8; 2017, No. 978, § 12.

Amendments. The 2017 amendment inserted “Pulaski County or” in (a).

20-77-909. Injunctions against fraud.

(a)(1) Whenever it appears that any person is engaged in or intends to engage in the transfer, conversion, or destruction of assets, records, or property in an effort to avoid detection of violations of this subchapter, the Attorney General may apply to the Pulaski County Circuit Court, or to the court in which the records or property are located, to seize and impound the property.

(2) The application for an ex parte order shall be in writing, furnish a reasonable basis for the granting of the proposed order, and demonstrate that an emergency exists which would support the granting of the motion.

(b)(1) If the order is granted, the respondent shall be notified of the order seizing and impounding his or her property immediately after the seizure, or as soon as is reasonably practicable. If, after diligent inquiry, the respondent cannot be located, notice under this subsection may be

accomplished by leaving a copy of the order at his or her dwelling house or usual place of abode with some person residing therein who is at least eighteen (18) years of age, or by delivering a copy thereof to a representative at the respondent's place of business who is at least eighteen (18) years of age.

(2) If the order is granted, the respondent shall be granted a hearing no later than five (5) days after being notified of the property's seizure for the purpose of determining whether the order should be continued.

(c) The burden at all stages of the proceeding shall be upon the state to prove by a preponderance of the evidence the necessity of the order of seizure.

History. Acts 1993, No. 1299, § 10;
1995, No. 984, § 1.

20-77-910. Suspension of violators.

The Director of the Department of Human Services may suspend or revoke the provider agreement between the Department of Human Services and the person in the event that the person is found guilty of violating the terms of this subchapter.

History. Acts 1993, No. 1299, § 9.

20-77-911. Persons providing information regarding Medicaid fraud — Rewards.

(a) The court is authorized to pay a person sums, not exceeding ten percent (10%) of the aggregate penalty recovered, as it may deem just, for information the person may have provided which led to the detecting and bringing to trial and punishment persons guilty of violating the Medicaid fraud laws.

(b) Upon disposition of any civil action relating to violations of this subchapter in which a penalty is recovered, the Attorney General may petition the court on behalf of a person who may have provided information that led to the detecting and bringing to trial and punishment persons guilty of Medicaid fraud to reward the person in an amount commensurate with the quality of information determined by the court to have been provided, in accordance with the requirements of this subchapter.

(c)(1) If the Attorney General elects not to petition the court on behalf of the person, the person may petition the court on his or her own behalf.

(2) Neither the state nor any defendant within the action shall be liable for expenses that a person incurs in bringing an action under this section.

(d) An employee or a fiscal agent charged with the duty of referring or investigating cases of Medicaid fraud who is employed by or who contracts with any governmental entity shall not be eligible to receive a reward under this section.

History. Acts 1993, No. 1299, § 11; 2011, No. 1154, § 1; 2013, No. 1132, § 50. employees”, “agent” for “agents”, “is” for “are”, and “contracts” for “contract” and inserted “a” following “An employee or”.
Amendments. The 2013 amendment, in (d), substituted “An employee” for “Em-

SUBCHAPTER 10 — DONATED DENTAL SERVICES PROGRAM OF ARKANSAS

SECTION.

20-77-1001. Creation — Reporting requirement.

Cross References. Dentists, dental hygienists, and dental assistants, § 17-82-101 et seq.

20-77-1001. Creation — Reporting requirement.

(a) The Department of Human Services shall establish the Donated Dental Services Program of Arkansas to coordinate the services of volunteer dentists and dental laboratories who will provide comprehensive dental care to needy, disabled, aged, and medically compromised individuals.

(b) The department may fulfill its obligations under this section by awarding a grant for the administration of the program.

(c) The department shall file a report with the Legislative Council on the program no later than September 1 of each year.

History. Acts 1997, No. 145, § 1.

SUBCHAPTER 11 — ARKIDS FIRST PROGRAM ACT

SECTION.

20-77-1101. Title.
20-77-1102. Purpose.
20-77-1103. Definitions.

SECTION.

20-77-1104. Waiver — Rules — Definitions.
20-77-1105. Funding.

20-77-1101. Title.

This subchapter shall be known and may be cited as the “ARKids First Program Act”.

History. Acts 1999, No. 849, § 1.

20-77-1102. Purpose.

The purpose and intent of this subchapter is to establish a program to provide access to appropriate healthcare services for eligible children in Arkansas.

History. Acts 1999, No. 849, § 2.

20-77-1103. Definitions.

For purposes of this subchapter:

(1) “Family” means a family as defined in the *Medical Services Policy Manual* of the Division of County Operations of the Department of Human Services; and

(2) “Healthcare coverage” means healthcare insurance as defined by rules promulgated by the Department of Human Services for the ARKids First Program.

History. Acts 1999, No. 849, § 3.

20-77-1104. Waiver — Rules — Definitions.

(a) As used in this section:

(1)(A) “Healthcare coverage” means healthcare insurance regulated by the State Insurance Department, including without limitation group and employer-sponsored health insurance plans.

(B) The Department of Human Services may by rule exclude other plans or coverage from the definition of healthcare coverage;

(2) “Parity for mental health care” means coverage for the diagnosis and mental health treatment of mental illnesses and the mental health treatment of individuals with developmental disabilities under the same terms and conditions as provided for covered benefits offered under the program for the treatment of other medical illnesses or conditions and with no differences in the program in regard to any of the following:

(A) The duration or frequency of coverage;

(B) The dollar amount of coverage; or

(C) Financial requirements; and

(3) “Program” means the ARKids First Program.

(b) The Department of Human Services shall administer the program.

(c)(1) The Department of Human Services shall not enroll any population defined in this section until the Department of Human Services has sought and obtained approval from the Centers for Medicare & Medicaid Services necessary to allow the use of matching federal funds to provide program services to that population.

(2) The Department of Human Services shall apply to the Centers for Medicare & Medicaid Services for approval to enroll the populations defined in subdivisions (d)(4)(B) and (C) of this section.

(d) The Department of Human Services shall administer and promulgate rules for the program in a manner that:

(1) Provides for the automatic assignment of medical payments due under §§ 20-77-302 and 20-77-307 as a condition of eligibility for benefits under the uninsured children’s program;

(2) Defines the services to be covered under the program, including without limitation parity for outpatient mental health care;

(3) Establishes a copayment for services received in the program as determined through rules adopted by the Department of Human Services;

(4) Defines the population which may receive services provided or reimbursed through this program within the following limitations:

(A) Children eighteen (18) years of age or younger without health-care coverage who are members of a family with a gross family income not exceeding two hundred fifty percent (250%) of the federal poverty guidelines;

(B) Persons nineteen (19) years of age or older but less than twenty-one (21) years of age who:

(i) Are without healthcare coverage;

(ii) Are members of a family with a gross family income not exceeding two hundred fifty percent (250%) of the federal poverty guidelines;

(iii) Are enrolled as full-time students in a public or private college, university, technical institute, technical college, or other institution of higher education located in the state; and

(iv) Are covered under the program under subdivision (d)(4)(A) of this section on the day before becoming nineteen (19) years of age; or

(C) Persons twenty-one (21) years of age or older but less than twenty-five (25) years of age who:

(i) Are without healthcare coverage;

(ii) Are members of a family with a gross family income not exceeding two hundred fifty percent (250%) of the federal poverty guidelines;

(iii) Are enrolled as full-time students in a public or private college, university, technical institute, technical college, or other institution of higher education located in the state; and

(iv) Are covered under the program under subdivision (d)(4)(A) of this section on the day before becoming twenty-one (21) years of age.

(e) A person enrolled in the full Medicaid program shall not be concurrently enrolled in the program except as required by federal law.

(f)(1) Subdivisions (d)(4)(B) and (C) of this section apply only to students who enroll as students in a public or private college, university, technical institute, technical college, or other institution of higher education no less than six (6) months after graduation from high school and who maintain a continuous enrollment each consecutive semester thereafter with no periods of time in which the person is not enrolled as a student, excluding regularly scheduled summer breaks.

(2) If a person who has enrolled in the program under subdivision (d)(4)(B) or subdivision (d)(4)(C) of this section is not enrolled as a student as set forth in subdivision (f)(1) of this section, the person shall not be entitled to healthcare coverage under the program and shall not be entitled to later resume coverage following a break in eligibility.

(g) Providers of covered services shall be enrolled as Medicaid providers, and reimbursement shall be at the rates established by the program.

History. Acts 1999, No. 849, § 4; 2001, No. 747, § 1; 2003, No. 552, § 1; 2009, No. 435, § 1.

20-77-1105. Funding.

- (a) Funding for the uninsured children’s program shall be derived from funds as may be provided by the General Assembly, copayments, and any federal matching funds available to the program.
- (b) It is further the intent of this subchapter that funds appropriated by the General Assembly for the purpose of funding the uninsured children’s program be used where appropriate and practical to match federal funding sources to enhance the total available funding for the operation of the uninsured children’s program.
- (c) The ARKids First Program shall operate only if funds are available for its operation.

History. Acts 1999, No. 849, § 5.

SUBCHAPTER 12 — MEDICAID PROGRAM FOR LOW-INCOME DISABLED WORKING PERSONS

SECTION.	SECTION.
20-77-1201. Title.	20-77-1204. Administration — Regula-
20-77-1202. Purpose.	tion.
20-77-1203. Definitions.	20-77-1205. Funding.

A.C.R.C. Notes. Acts 2015, No. 1005, § 1, provided: “THE HEALTHY ARKANSAS EDUCATIONAL PROGRAM.

“(a)(1) The University of Arkansas Division of Agriculture Cooperative Extension Service and the Department of Human Services shall implement collaboratively the Healthy Arkansas Educational Program described in this act.

“(2) The purpose of the Healthy Arkansas Educational Program is to create opportunities for Medicaid beneficiaries to receive training and education in areas which may include without limitation:

“(A) Nutrition, food safety and food preservation;

“(B) Family and consumer economics;

“(C) Marriage, parenting and family life; and

“(D) Health, wellness and prevention.

“(b) The University of Arkansas Division of Agriculture Cooperative Extension Service and the Department of Human Services, jointly and separately, shall seek and apply for grants opportunities, federal waivers, or other resources to:

“(A) Fund and implement the Healthy Arkansas Educational Program; and

“(B) Provide incentives to Medicaid beneficiaries to participate.

“(c) If sufficient grant funds and other resources are obtained, the University of Arkansas Division of Agriculture Cooperative Extension Service shall:

“(1) Schedule and conduct classes and training sessions for Medicaid beneficiaries in topics that further the purpose of the program; and

“(2) Develop classes, curriculum and training materials appropriate for the training or classes offered.

“(d) If sufficient grant funds and other resources are obtained, the Department of Human Services shall:

“(1) Develop protocols and policies to refer Medicaid beneficiaries for scheduled classes and training sessions offered by the University of Arkansas Division of Agriculture Cooperative Extension Service;

“(2) Identify specific populations and geographic areas most likely to benefit

from the classes and training sessions provided under this act; and

“(3) Provide technical assistance to the University of Arkansas Division of Agriculture Cooperative Extension Service by compiling supporting aggregate data and research for use in grant applications.

“(e) Participation by a Medicaid beneficiary in a class or training session offered

under this section is not a condition of eligibility for Medicaid.

“(f) The University of Arkansas Division of Agriculture Cooperative Extension Service and the Department of Human Services shall implement the Healthy Arkansas Educational Program only to the extent that adequate funding is specifically made available.”

20-77-1201. Title.

This subchapter shall be known and may be cited as the “Medicaid Program for Low-Income Disabled Working Persons”.

History. Acts 1999, No. 1197, § 1.

20-77-1202. Purpose.

The purpose and intent of this subchapter is to establish a new optional categorically needy Medicaid eligibility group under section 4733 of the Balanced Budget Act of 1997 to provide medical assistance to disabled working persons whose family incomes are less than two hundred fifty percent (250%) of the federal poverty guidelines.

History. Acts 1999, No. 1197, § 2.

U.S. Code. Section 4733 of the Balanced Budget Act of 1997, Pub. L. No.

105-33, referred to in this section is codified at 42 U.S.C. § 1396a.

20-77-1203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1)(A) “Cost sharing” means the portion of the cost of a Medicaid-covered service which must be paid at the point of service by the eligible individual.

(B) Cost sharing shall be set on a sliding scale based on income;

(2) “Eligible individual” means an individual who meets the disability assets and unearned income standards to receive supplemental security income, who would be considered to be receiving supplemental security income benefits but for his or her earned income;

(3) “Family” means family as defined in the Medical Services Policy Manual;

(4) “Medicaid-covered service” means physician, pharmacy, and hospital services covered for other categories of the Arkansas Medicaid Program; and

(5) “Premium” means a charge which must be paid by an applicant as a condition of enrolling in the low-income disabled working person category of Medicaid eligibility.

History. Acts 1999, No. 1197, § 3; 2013, No. 1048, § 1.

A.C.R.C. Notes. Acts 2013, No. 1048, § 3, provided:

“(a) The Department of Human Services shall adopt rules to implement this section.

“(b) If necessary, the department shall apply for a waiver from the Centers for Medicare and Medicaid Services for approval of the rules adopted under this

section.”

Amendments. The 2013 amendment deleted “and whose net combined family income is less than two hundred fifty percent (250%) of the federal poverty guideline” from the end of (2).

20-77-1204. Administration — Regulation.

(a) The Department of Human Services is authorized to apply to the Centers for Medicare & Medicaid Services for approval to create and administer the low-income disabled working person category of Medicaid eligibility.

(b) The department shall promulgate rules for and administer the low-income disabled working person category of Medicaid eligibility in conformity with this subchapter with a state Medicaid plan amendment or waiver approved by the administration and in a manner that:

(1) Limits the population that may enroll in the low-income disabled working person category of Medicaid eligibility to eligible persons;

(2) Establishes premium and cost-sharing charges on a sliding scale based on income;

(3) Limits the services reimbursed to Medicaid-covered services furnished by providers enrolled as Medicaid providers;

(4) Limits reimbursements to the rates established by the department; and

(5) Provides for the automatic assignment of medical payments due as set out in §§ 20-77-302 and 20-77-307 as a condition of eligibility for benefits under the low-income disabled working person category of Medicaid eligibility.

(c) A rule adopted under this section shall not include a test for income, assets, or resources.

History. Acts 1999, No. 1197, § 4; 2013, No. 1048, § 2.

A.C.R.C. Notes. Acts 2013, No. 1048, § 3, provided:

“(a) The Department of Human Services shall adopt rules to implement this section.

“(b) If necessary, the department shall apply for a waiver from the Centers for Medicare and Medicaid Services for approval of the rules adopted under this section.”

Amendments. The 2013 amendment added (c).

20-77-1205. Funding.

(a) Funding for the low-income disabled working person category of Medicaid eligibility shall be derived from funds as may be provided by the General Assembly, premiums, cost sharing, and any federal matching funds available to the Medicaid Program for Low-Income Disabled Working Persons.

(b) It is further the intent of this subchapter that funds appropriated by the General Assembly for the purpose of funding the low-income disabled working person category of Medicaid eligibility be used where

appropriate and practicable to match federal funding sources to enhance the total available funding for the operation of the program.

History. Acts 1999, No. 1197, § 5.

SUBCHAPTER 13 — MEDICAL ASSISTANCE PROGRAMS INTEGRITY LAW

SECTION.

20-77-1301. Title.

20-77-1302. Legislative intent and purpose.

20-77-1303. Definitions.

SECTION.

20-77-1304. Claims review and administrative sanctions.

20-77-1305. Settlement.

20-77-1301. Title.

This subchapter may be cited as the “Medical Assistance Programs Integrity Law”.

History. Acts 1999, No. 1544, § 1.

20-77-1302. Legislative intent and purpose.

(a) This subchapter is enacted to combat and prevent fraud and abuse committed by some healthcare providers participating in the medical assistance programs and by other persons and to negate the adverse effects those activities have on fiscal and programmatic integrity. The administrative sanctions imposed pursuant to this subchapter are intended to be in addition to those provided for in the Medicaid Fraud Act, § 5-55-101 et seq., and the Medicaid Fraud False Claims Act, § 20-77-901 et seq., and any proceeding brought hereunder shall not be a bar or defense to actions brought pursuant to these or other acts.

(b) The General Assembly intends to provide the Director of the Department of Human Services with the ability, authority, and resources to pursue administrative sanctions and liquidated damages to protect the fiscal and programmatic integrity of the medical assistance programs from healthcare providers and other persons who engage in fraud, misrepresentation, abuse, or other ill practices, as set forth in this subchapter in order to obtain payments to which these healthcare providers or persons are not entitled.

History. Acts 1999, No. 1544, § 2.

20-77-1303. Definitions.

As used in this subchapter, the following terms shall have the following meanings:

(1) “Administrative adjudication” means adjudication and the adjudication process contained in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(2) “Claim” includes any request or demand, including any and all documents or information required by federal or state law or by rule, made against medical assistance programs funds for payment. A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. A claim may be made through electronic means if authorized by the Department of Human Services. Each claim may be treated as a separate claim or several claims may be combined to form one (1) claim;

(3) “Department director” or “director” means the Director of the Department of Human Services;

(4) “Healthcare provider” means any person furnishing or claiming to furnish a good, service, or supply under the medical assistance programs, any other person defined as a healthcare provider by federal or state law or rule, and a provider-in-fact;

(5) “Medical assistance programs” means the Medical Assistance Program, Title XIX of the Social Security Act, commonly referred to as “Medicaid”, and other programs operated by and funded in the department which provide payment to persons or entities providing any good, service, or supply to a recipient;

(6) “Order” means a final order imposed pursuant to an administrative adjudication;

(7) “Payment” means the payment to a healthcare provider from medical assistance programs funds pursuant to a claim, or the attempt to seek payment for a claim;

(8) “Recoupment” means recovery through the reduction, in whole or in part, of payment to a healthcare provider;

(9) “Rule” means any rule or regulation promulgated by the department in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and any federal rule or regulation promulgated by the United States Government in accordance with federal law; and

(10) “Withhold payment” means to reduce or adjust the amount, in whole or in part, to be paid to a healthcare provider for a pending or future claim during the time of a criminal, civil, or departmental investigation or proceeding or claims review of the healthcare provider.

History. Acts 1999, No. 1544, § 3.

Security Act, referred to in this section, is

U.S. Code. Title XIX of the Social

codified as 42 U.S.C. § 1396 et seq.

20-77-1304. Claims review and administrative sanctions.

(a)(1) Pursuant to rules and regulations promulgated in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., the Director of the Department of Human Services shall establish a process to review a claim made by a healthcare provider to determine whether the claim should be or should have been paid as required by federal or state law or rule.

(2) Claims review may occur before or after payment is made to a healthcare provider.

(3) The director may withhold payment to a healthcare provider during claims review if necessary to protect the fiscal integrity of the medical assistance programs, provided that the healthcare provider has an opportunity for a hearing within sixty (60) days of the date payment is withheld.

(b)(1) The director may establish various types of administrative sanctions pursuant to rules and regulations promulgated in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., which may be imposed on a healthcare provider or other person who violates any provision of this subchapter or any other applicable federal or state law or rule related to the medical assistance programs.

(2) Administrative sanction shall include any or all of the following: recoupment, posting of bond or other security, or a combination thereof; exclusion as a healthcare provider; or liquidated damages.

(c)(1) The Department of Human Services shall conduct a hearing in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., at the request of a person who wishes to contest an administrative sanction imposed on him or her by the director.

(2) A party aggrieved by an order may seek judicial review in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3) Judicial review of the order shall be conducted in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) All state rules and regulations issued on or before July 30, 1999, shall be deemed to have been issued in compliance with the authority of this section.

History. Acts 1999, No. 1544, § 4.

20-77-1305. Settlement.

The Director of the Department of Human Services may agree to settle an administrative sanction. The terms of the settlement shall be reduced to writing and signed by the parties to the agreement. The terms of the settlement shall be a public record. The settlement shall include the method and means of payment for recovery, including, but not limited to, adequate security for the full amount of the settlement.

History. Acts 1999, No. 1544, § 5.

SUBCHAPTER 14 — PRESCRIPTION DRUG ACCESS IMPROVEMENT ACT

SECTION.

20-77-1401. Title.

20-77-1402. Purpose.

20-77-1403. Definitions.

SECTION.

20-77-1404. Prescription drug benefit
Medicaid waiver.

20-77-1405. Waiver application.

20-77-1401. Title.

This subchapter shall be known and may be cited as the “Prescription Drug Access Improvement Act”.

History. Acts 2001, No. 1658, § 1.

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of assembly, Public Health and Welfare, 24 U. Legislation, 2001 Arkansas General As- Ark. Little Rock L. Rev. 557.

20-77-1402. Purpose.

The purpose and intent of this subchapter is to authorize a Medicaid waiver to provide affordable prescription drugs for eligible persons sixty-five (65) years of age and over.

History. Acts 2001, No. 1658, § 1.

20-77-1403. Definitions.

As used in this subchapter:

- (1) “Department” means the Department of Human Services;
- (2) “Medicaid” means the Arkansas program of medical assistance established under Title XIX of the Social Security Act;
- (3) “Prescription Drug Access Program” means the limited prescription drug benefit Medicaid waiver program established under this subchapter;
- (4) “Prescription drugs” means controlled substances and legend drugs as defined in § 20-64-503; and
- (5) “Waiver” means the limited prescription drug benefit Medicaid waiver authorized by this subchapter.

History. Acts 2001, No. 1658, § 1. Security Act, referred to in this section, is
U.S. Code. Title XIX of the Social codified as 42 U.S.C. § 1396 et seq.

20-77-1404. Prescription drug benefit Medicaid waiver.

The Department of Human Services may apply to the Centers for Medicare & Medicaid Services for a limited prescription drug benefit Medicaid waiver for persons who:

- (1) Are sixty-five (65) years of age or over;
- (2) Have no prescription drug coverage; and
- (3) Have incomes and resources at or below the income-qualified and resource-qualified Medicare beneficiary eligibility standards established by the department.

History. Acts 2001, No. 1658, § 1.

20-77-1405. Waiver application.

Any waiver application submitted by the Department of Human Services shall include provisions for the department to:

(1)(A) Establish an income eligibility standard not to exceed:

(i) Eighty percent (80%) of the federal poverty guideline for the period July 1, 2001, through June 30, 2002;

(ii) Ninety percent (90%) of the federal poverty guideline for the period July 1, 2002, through June 30, 2003; and

(iii) One hundred percent (100%) of the federal poverty guideline after June 30, 2003.

(B) Postpone or abolish any increases to the income eligibility standards if program costs exceed projections or if adequate funding is unavailable;

(2) Require qualified residents to pay an annual enrollment fee of twenty-five dollars (\$25.00) during the biennium beginning July 1, 2001;

(3) Have the authority to amend the qualified resident enrollment fee by rule beginning July 1, 2003, provided that qualified resident enrollment fee increases may not exceed fifteen percent (15%) during any state fiscal year;

(4) Establish copayments of ten dollars (\$10.00) for generic drugs and twenty dollars (\$20.00) for name-brand drugs;

(5) Determine eligibility for limited prescription drug benefits under the waiver;

(6) Limit prescription drug benefits under the waiver to two (2) prescriptions per person per month; and

(7) Provide limited prescription drug benefits only in accordance with an approved waiver from the Centers for Medicare & Medicaid Services.

History. Acts 2001, No. 1658, § 1.

SUBCHAPTER 15 — COMMUNITY-BASED HEALTHCARE ACCESS PROGRAMS

SECTION.

20-77-1501. Legislative findings and intent.

20-77-1502. Definitions.

20-77-1503. Program administration —
Member agreements —
Definition.

20-77-1504. Coordination with local
health education center
programs.

20-77-1505. Donations by community-
based health cooperatives.

SECTION.

20-77-1506. Program report.

20-77-1507. Community-based health co-
operatives' activity
deemed not to be practice
of medicine.

20-77-1508. Immunity and liability.

20-77-1509. Community-based health co-
operative deemed not to be
public utility or regulated
industry.

Effective Dates. Acts 2003, No. 660,
§ 10: Mar. 26, 2003: "It is found and

determined by the General Assembly of
the State of Arkansas that the availability

of a continuum of quality health care services, including preventive, primary, secondary, tertiary and long term care, is essential to the economic and social vitality of some communities; that in many communities access to health care services is limited and the quality of health care services is negatively affected by inadequate financing, difficulty in recruiting and retaining skilled health professionals, and the migration of rural patients to urban areas for general acute care and specialty services; that the efficient and effective delivery of health care services to the uninsured requires the integration of public and private resources and the coordination of health care providers; that currently state law does not provide the flexibility necessary to accomplish integration and coordination in a cost-effective manner; that the ability to create community-based health cooperatives to organize community-based health care programs and community-based health networks can help to alleviate many of the problems identified with the delivery of quality health care in many communities;

that community-based health cooperatives and their programs and networks may serve as public laboratories to determine the best way of organizing health services so that the state can move closer to ensuring that everyone has access to health care while promoting cost containment efforts; that the immediate passage of this act is necessary to continue to provide a statutory framework for the establishment of community-based health cooperatives to accomplish the objectives described in this act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-77-1501. Legislative findings and intent.

(a) The General Assembly finds that:

(1) The State of Arkansas currently ranks forty-sixth among the fifty (50) states for having the least healthy population;

(2) A major contributing factor to the state's low health ranking is its high percentage of uninsured persons;

(3) There is a significant gap in the state's healthcare safety net, especially with regard to working adults with low incomes; and

(4) New relationships are needed between the federal and state governments, local communities, healthcare providers, employers, and uninsured persons in this state so that healthcare services for the uninsured will be more accessible, more affordable, and more effective.

(b) Therefore, there is created a statutory framework for the establishment of community-based healthcare access programs that can serve as a bridge to connect and assist government, communities, and citizens to develop a more comprehensive and responsible healthcare system, one that seeks to expand access and education with regard to health services for economically disadvantaged, uninsured working adults.

History. Acts 2003, No. 660, § 1.

20-77-1502. Definitions.

As used in this subchapter:

(1) "Community-based" means based in, located in, or primarily relating to the community of geographically contiguous political subdivisions, as determined by the board of a community-based health cooperative, that will be or is served by the community-based healthcare access program initiated by the cooperative;

(2) "Community-based healthcare access program" means a program administered by a community-based health cooperative whereby hospital, medical, health education, and other healthcare services may be furnished by or through provider members of a community-based health network, or combination of networks, to uninsured residents of that community who are members of the program;

(3) "Community-based health cooperative" means a nonprofit corporation organized under the laws of this state that:

(A) Undertakes to establish, maintain, and operate a community-based healthcare access program; and

(B) Is governed by a board:

(i) With at least eighty percent (80%) of its members residing in the community; and

(ii) Including representatives of network providers; and

(4) "Community-based health network" means a contract-based network organized by a community-based health cooperative to provide or support the delivery of healthcare services to members served by the community-based healthcare access program.

History. Acts 2003, No. 660, § 2.

20-77-1503. Program administration — Member agreements — Definition.

(a) A community-based health cooperative shall administer a community-based healthcare access program in a manner that:

(1) Defines the population that may receive subsidized services provided through the community-based healthcare access program by limiting program eligibility to adults between eighteen (18) years of age and sixty-five (65) years of age who:

(A) Are residing in or working in the community being served by the community-based healthcare access program;

(B) Are without healthcare coverage;

(C) Are not eligible for Medicare, Medicaid, or other similar government programs;

(D) Have an income not exceeding two hundred percent (200%) of the federal poverty level, as in effect January 1, 2003; and

(E) Meet any other requirements that, consistent with the purposes of this subchapter, are established by the board of directors of the community-based health cooperative;

(2) Defines the population that may receive unsubsidized services provided through the community-based healthcare access program by

limiting community-based healthcare access program eligibility to adults between eighteen (18) years of age and sixty-five (65) years of age and their dependent children who:

(A) Are residing in or working in the community being served by the community-based healthcare access program;

(B) Are without healthcare coverage;

(C) Are not eligible for Medicare, Medicaid, ARKids First, or similar government programs;

(D) Have an income not exceeding three hundred percent (300%) of the federal poverty guidelines or are full-time employees of the community-based health cooperative; and

(E) Meet any other requirements that, consistent with the purposes of this subchapter, are established by the board;

(3) Provides for the automatic assignment of medical payments due the client member of the community-based healthcare access program to the community-based health cooperative as a condition of eligibility;

(4) Defines the services to be covered under the community-based healthcare access program; and

(5) Establishes copayments for services received by client members of the community-based healthcare access program.

(b) To promote the most efficient use of resources, community-based health cooperatives shall emphasize in client member agreements and provider member agreements:

(1) Disease prevention;

(2) Early diagnosis and treatment of medical problems; and

(3) Community-care alternatives for individuals who would otherwise be at risk to be institutionalized.

(c)(1) A community-based health cooperative shall file with the Insurance Commissioner the community-based healthcare access program it develops.

(2) The filing with the commissioner shall be for review purposes only and shall neither require approval or disapproval by the commissioner.

(3) The information filed with the commissioner shall include an actuarial certification.

(4) For the purposes of this subsection, "actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individuals acceptable to the commissioner that the community-based healthcare access program is actuarially sound based upon the person's examination, including a review of the appropriate records and methods utilized by the community-based health cooperative in establishing premium rates for the community-based healthcare access program.

History. Acts 2003, No. 660, § 3.

20-77-1504. Coordination with local health education center programs.

Whenever feasible, community-based health cooperatives shall participate actively with area health education center programs in developing and implementing recruitment, training, and retention programs directed at positively influencing the supply and distribution of health-care professionals serving in or receiving training in rural health network areas.

History. Acts 2003, No. 660, § 4.

20-77-1505. Donations by community-based health cooperatives.

A community-based health cooperative may make donations for the public welfare or for charitable, scientific, or educational purposes, subject to such limitations, if any, as may be contained in its articles of incorporation or any amendment to the articles of incorporation.

History. Acts 2003, No. 660, § 5.

20-77-1506. Program report.

(a) In order to demonstrate community-based healthcare access program viability and effectiveness, a community-based health cooperative shall collect data and, upon request, make available a report to the appropriate interim committees of the Senate and House of Representatives.

(b) Data shall include:

- (1) The results of client member surveys;
- (2) The results of provider member surveys;
- (3) The results of community-need-assessment surveys; and
- (4) Other data as may be relevant to the community-based healthcare access program.

(c) The report shall include recommendations with regard to criteria and priorities for improvement and expansion of the community-based healthcare access program.

History. Acts 2003, No. 660, § 6.

20-77-1507. Community-based health cooperatives' activity deemed not to be practice of medicine.

No community-based health cooperative shall be deemed to be engaged in the corporate practice of medicine.

History. Acts 2003, No. 660, § 7.

20-77-1508. Immunity and liability.

No liability on the part of and no cause of action of any nature shall arise against any member of the board of directors of a community-based health cooperative or against an employee or agent of a community-based health cooperative for any lawful action taken by them in the performance of their administrative powers and duties under this subchapter.

History. Acts 2003, No. 660, § 8.

20-77-1509. Community-based health cooperative deemed not to be public utility or regulated industry.

(a)(1) Community-based health cooperatives shall not be considered or regulated as any type of entity governed by Title 23 of the Arkansas Code.

(2) No program offered by a community-based health cooperative shall be subject to regulation under Title 23 of the Arkansas Code.

(b) An entity subject to regulation under Title 23 of the Arkansas Code that contracts with a community-based health cooperative to provide or to arrange for the provision of secondary or tertiary services to client members of a community-based healthcare access program may not be required to comply with any provision of Title 23 of the Arkansas Code that mandates the provision of certain benefits, mandates the provision of a certain level of benefits, or both, regarding client members of a program. The exemption from regulation under Title 23 of the Arkansas Code shall apply only to the entity’s contracts with or services provided to the community-based health cooperative, and in all other instances, the entity is subject to the provisions of Title 23 of the Arkansas Code.

History. Acts 2003, No. 660, § 9.

SUBCHAPTER 16 — ARKANSAS YOUTH SUICIDE PREVENTION ACT

SECTION.	SECTION.
20-77-1601. Title.	20-77-1606. Task force — Meetings.
20-77-1602. Legislative findings.	20-77-1607. Advisory Council to the Arkansas Youth Suicide Prevention Task Force — Creation.
20-77-1603. Purpose.	
20-77-1604. Arkansas Youth Suicide Prevention Task Force — Creation.	20-77-1608. Advisory council — Mission.
20-77-1605. Task force — Mission.	

20-77-1601. Title.

This subchapter shall be known and may be cited as the “Arkansas Youth Suicide Prevention Act”.

History. Acts 2005, No. 1757, § 1.

20-77-1602. Legislative findings.

(a) The General Assembly finds that youth suicide is a serious problem that:

- (1) Takes the life of a youngster who has only begun to live; and
- (2) Can be prevented with suicide intervention strategies.

(b) The General Assembly also recognizes that suicide is the third leading cause of death for young people between fifteen (15) years of age and twenty-four (24) years of age and the fourth leading cause of death for persons between ten (10) years of age and fourteen (14) years of age.

History. Acts 2005, No. 1757, § 1.

20-77-1603. Purpose.

The purpose of this subchapter is to establish:

- (1) A task force made up of youth students, classroom teachers, and school counselors that addresses issues related to the prevention of youth suicide in an age group that is most vulnerable to depression; and
- (2) An advisory council to provide the task force with scientifically based information on youth suicide, including suicide prevention best practices programs and recommendations for the implementation of proven suicide prevention programs for young people in the State of Arkansas.

History. Acts 2005, No. 1757, § 1.

20-77-1604. Arkansas Youth Suicide Prevention Task Force — Creation.

(a) There is established the Arkansas Youth Suicide Prevention Task Force.

(b) The task force shall consist of seventeen (17) members as follows:

(1)(A) The Governor shall appoint eight (8) members:

(i) Two (2) students who are in grades seven (7) or eight (8) at the time of appointment;

(ii) Two (2) students who are in grades nine through twelve (9-12) at the time of appointment; and

(iii) Four (4) students who attend an institution of higher education in the state.

(B) Each student appointed under subdivision (b)(1)(A) of this section shall reside in and represent a different University of Arkansas for Medical Sciences health education center region;

(2) The Governor shall appoint two (2) members who are classroom teachers;

(3) The Governor shall appoint two (2) members who are school counselors;

(4) The President Pro Tempore of the Senate shall appoint two (2) members who represent the state at large;

- (A) One (1) student who is in grades nine through twelve (9-12) at the time of appointment; and
- (B) One (1) student who attends an institution of higher education in the state;
- (5) The Speaker of the House of Representatives shall appoint two (2) members who represent the state at large:
 - (A) One (1) student who is in grades nine through twelve (9-12) at the time of appointment; and
 - (B) One (1) student who attends an institution of higher education in the state; and
- (6) The Attorney General or the Attorney General's designee.
- (c)(1)(A) The Governor shall consult the Department of Education before appointing a student member.
- (B) The Governor shall select student members to represent each of the following health education center regions:
 - (i) Central;
 - (ii) South central;
 - (iii) North central;
 - (iv) Northeast;
 - (v) Northwest;
 - (vi) Southwest;
 - (vii) South; and
 - (viii) Delta.
- (C) Student members shall be at least thirteen (13) years of age but less than twenty-two (22) years of age when appointed.
- (2) The Governor shall select the classroom teacher members after consulting the Arkansas Education Association.
- (3) The Governor shall select the school counselor members after consulting the Arkansas Counseling Association.
- (4) All members shall be residents of the State of Arkansas at the time of appointment and throughout their terms.
- (5) Appointments made by the Governor under this section shall be subject to confirmation by the Senate.
- (d)(1) In 2005, eight (8) members shall be appointed by the Governor to serve as follows:
 - (A) Two (2) for terms to expire June 30, 2006;
 - (B) Two (2) for terms to expire June 30, 2007;
 - (C) Two (2) for terms to expire June 30, 2008; and
 - (D) Two (2) for terms to expire June 30, 2009.
- (2) In 2005, two (2) members shall be appointed by the Speaker of the House of Representatives to serve as follows:
 - (A) One (1) for a term to expire June 30, 2006; and
 - (B) One (1) for a term to expire June 30, 2007.
- (3) In 2005, two (2) members shall be appointed by the President Pro Tempore of the Senate to serve as follows:
 - (A) One (1) for a term to expire June 30, 2008; and
 - (B) One (1) for a term to expire June 30, 2009.
- (4) Subsequent appointments are for terms of two (2) years.

(e)(1) If a vacancy occurs in an appointed position for any reason, the vacancy shall be filled by appointment by the official who made the appointment.

(2) The new appointee shall serve for the remainder of the unexpired term.

History. Acts 2005, No. 1757, § 1; 2015, No. 1100, § 53.

Amendments. The 2015 amendment rewrote (c)(1)(A); substituted “after consulting” for “from a list of interested

teachers who are recommended by” in (c)(2); substituted “after consulting” for “from a list of interested school counselors who are recommended by” in (c)(3); and added (c)(5).

RESEARCH REFERENCES

ALR. Liability of Public or Private Schools or Institutions of Higher Learning, or Personnel Thereof, in Connection

with Suicide of Student. 100 A.L.R.6th 563 (2014).

20-77-1605. Task force — Mission.

The Arkansas Youth Suicide Prevention Task Force shall:

(1) Assist in increasing the awareness of youth suicide among school personnel and community leaders;

(2) Enhance the school climate and relationships among teachers, counselors, and students to encourage everyone to recognize the signs of suicidal tendencies and other facts about youth suicide;

(3) Encourage the development and implementation of school-based youth suicide prevention programs and pilot projects;

(4) Utilize community resources in the development and implementation of youth suicide prevention programs through cooperative efforts;

(5) Increase the awareness of students of the relationship between drug and alcohol use and youth suicide;

(6) Advocate programs to collect data on youth suicide attempts; and

(7) Develop a program of suicide prevention for distribution to the schools of the State of Arkansas.

History. Acts 2005, No. 1757, § 1.

20-77-1606. Task force — Meetings.

(a)(1) The Arkansas Youth Suicide Prevention Task Force shall hold a meeting at least one (1) time during each quarter of the calendar year.

(2) The Commissioner of Education shall call the first meeting of the task force no later than thirty (30) days after all of the members are appointed to the task force.

(b)(1) At the first meeting, the task force shall determine by majority vote who shall serve as chair, vice chair, and secretary.

(2)(A) The task force shall elect officers annually at the first meeting of the task force in each calendar year.

(B) Officers shall serve one-year terms.

(c) A quorum shall consist of not fewer than nine (9) members. An affirmative vote of a quorum is necessary for the disposition of business.

(d) At the end of each calendar year, the task force shall submit a report to the commissioner.

(e)(1) The Department of Education shall provide staff and office space to the task force.

(2) The office space shall be in Little Rock, Arkansas.

(f)(1) Members shall receive no pay for services with respect to attendance at each meeting.

(2) However, if funds are appropriated for the purpose, members are entitled to expense reimbursement under § 25-16-902 for each day that the task force meets.

History. Acts 2005, No. 1757, § 1.

20-77-1607. Advisory Council to the Arkansas Youth Suicide Prevention Task Force — Creation.

(a) To assist the Arkansas Youth Suicide Prevention Task Force, there is established the Advisory Council to the Arkansas Youth Suicide Prevention Task Force.

(b) The council shall consist of the following members:

(1) The Chair of the Department of Psychiatry of the University of Arkansas for Medical Sciences shall appoint two (2) members, one (1) of whom shall be designated as the Chair of the Advisory Council to the Arkansas Youth Suicide Prevention Task Force;

(2) The Director of the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall appoint one (1) member from the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services;

(3) The Dean of the Fay W. Boozman College of Public Health of the University of Arkansas for Medical Sciences shall appoint one (1) member from the Department of Health Behavior and Health Education of the University of Arkansas for Medical Sciences;

(4) The Commissioner of Education shall appoint one (1) member;

(5) The Chair of the Department of Psychiatry of the University of Arkansas for Medical Sciences shall appoint one (1) member from a list of three (3) persons submitted by the Arkansas office of the National Alliance on Mental Illness;

(6) The Chair of the Department of Psychiatry of the University of Arkansas for Medical Sciences shall appoint one (1) member from a list of three (3) persons submitted by the Board of Directors of Arkansas for Drug Free Youth; and

(7) The Chair of the Advisory Council to the Arkansas Youth Suicide Prevention Task Force shall appoint one (1) interested parent from a list of interested parents who respond to a newspaper notice placed by the Department of Psychiatry of the University of Arkansas for Medical Sciences within thirty (30) days of August 12, 2005.

(c) Each member of the council shall serve for a term of two (2) years.

(d)(1) If a vacancy occurs in an appointed position for any reason, the vacancy shall be filled by appointment by the official who made the appointment.

(2) The new appointee shall serve for the remainder of the unexpired term.

(e)(1) The council shall meet at the times and places that the chair deems necessary, but no meetings shall be held outside the State of Arkansas.

(2)(A) Five (5) of the members of the council shall constitute a quorum for the purpose of transacting business.

(B) All actions of the council shall be by a quorum.

(f)(1) Members shall receive no pay for services with respect to attendance at each meeting.

(2) However, if funds are appropriated for the purpose, members are entitled to expense reimbursement under § 25-16-902 for each day that the council meets.

History. Acts 2005, No. 1757, § 1; Behavioral Health Services of the Department of Human Services” for “Division of Behavioral Health Services” twice in 2017, No. 913, § 114.

Amendments. The 2017 amendment substituted “Division of Aging, Adult, and (b)(2).

20-77-1608. Advisory council — Mission.

The Advisory Council to the Arkansas Youth Suicide Prevention Task Force shall:

(1) Serve as a liaison between the Arkansas Youth Suicide Prevention Task Force and the scientific and treatment community to ensure that task force activities are firmly based in effective and safe suicide prevention activities;

(2) Research and make recommendations to the task force, the House Committee on Public Health, Welfare, and Labor, the Senate Committee on Public Health, Welfare, and Labor, and the General Assembly regarding successful youth suicide prevention programs used in other states;

(3) Develop a plan for a model youth suicide prevention program that can be implemented throughout the state with site-specific recommendations and recommend a timeline for the implementation of the model program;

(4)(A) If funds are appropriated for the purpose, host a conference with national experts in the field of youth suicide prevention.

(B) The Department of Psychiatry of the University of Arkansas for Medical Sciences shall coordinate the conference in conjunction with the task force.

(C) Invitees to the conference shall include students in grades seven through twelve (7-12), college students, teachers, professors, staff, and administrators of public schools, private schools, and institutions of higher education, mental health professionals, legislators, and other interested persons;

- (5) Monitor and disburse appropriations for the task force, the council, and related activities;
- (6) Apply for, receive, and disburse grants related to youth suicide prevention and research as the council deems appropriate; and
- (7) Participate in the quarterly meetings of the task force.

History. Acts 2005, No. 1757, § 1; deleted “Interim” following “House” and 2013, No. 1132, § 51. “Senate” in (2).

Amendments. The 2013 amendment

SUBCHAPTER 17 — MEDICAID FAIRNESS ACT

SECTION.

- 20-77-1701. Legislative findings and intent.
- 20-77-1702. Definitions.
- 20-77-1703. Recoupment.
- 20-77-1704. Provider administrative appeals allowed.
- 20-77-1705. Explanations for adverse decisions required.
- 20-77-1706. Reimbursement at an alternate level instead of complete denial.
- 20-77-1707. Prior authorizations — Retrospective reviews.
- 20-77-1708. Medical necessity.

SECTION.

- 20-77-1709. Promulgation before enforcement.
- 20-77-1710. Delivery of files.
- 20-77-1711. Copies of records to be supplied to department — Exception.
- 20-77-1712. Notices.
- 20-77-1713. Deadlines.
- 20-77-1714. Hospital claims.
- 20-77-1715. Federal law.
- 20-77-1716. Promulgation of rules.
- 20-77-1717. Timelines for audits.
- 20-77-1718. Termination — Appeals.

Effective Dates. Acts 2005, No. 1758, § 2: Apr. 5, 2005. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that Medicaid providers are frustrated in their attempts to access the appeals process and to interact with the Medicaid program, and that it is imperative that changes be made in state law to remedy these problems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2007, No. 596, § 8: Mar. 28, 2007. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that clarifications are needed in order for Medicaid providers to gain access to the appeals process and

to interact with the Medicaid program as envisioned under the Medicaid Fairness Act; and that it is imperative that changes be made in state law to remedy these problems. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2013, No. 562, § 8: Emergency clause failed to pass. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that clarifications and changes in state law are needed for Medicaid providers to have a fair appeals process and to interact with the Medicaid program as envisioned under the Medicaid Fairness Act. It is further found and determined that Medicaid providers are entitled to a

fair and impartial hearing with a neutral decision maker, that the most effective and efficient way to accomplish this is to utilize administrative law judges hired through the Department of Health to hear all provider appeals under the act, and that subdivision 20-77-1704(b)(1)(C) becomes effective on July 1, 2013. Therefore, an emergency is declared to exist, and this act being immediately necessary for the

preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

20-77-1701. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Healthcare providers who serve Medicaid recipients are an indispensable and vital link in serving this state's needy citizens; and

(2) The Department of Human Services already has in place various provisions to:

(A) Ensure the protection and respect for the rights of Medicaid recipients; and

(B) Sanction errant Medicaid providers when necessary.

(b) The General Assembly intends this subchapter to ensure that the department and its outside contractors treat providers with fairness and due process.

History. Acts 2005, No. 1758, § 1.

20-77-1702. Definitions.

As used in this subchapter:

(1) "Abuse" means a pattern of provider conduct that is inconsistent with sound fiscal, business, or medical practices and that results in:

(A) An unnecessary cost to the Arkansas Medicaid Program; or

(B) Reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care;

(2)(A) "Adverse decision" means any decision by the Department of Human Services or its reviewers or contractors that adversely affects a Medicaid provider or recipient in regard to:

(i) Receipt of and payment for Medicaid claims and services, including, but not limited to, decisions as to:

(a) Appropriate level of care or coding;

(b) Medical necessity;

(c) Prior authorization;

(d) Concurrent reviews;

(e) Retrospective reviews;

(f) Least restrictive setting;

(g) Desk audits;

(h) Field audits and onsite audits; and

(i) Inspections or surveys; and

(ii) Payment amounts due to or from a particular provider resulting from gain sharing, risk sharing, incentive payments, or another reimbursement mechanism or methodology, including calculations that affect or have the potential to affect payment.

(B) To constitute an adverse decision, an agency decision need not have a monetary penalty attached but must have a direct monetary consequence to the provider.

(C) "Adverse decision" does not include the design of or changes to an element of a reimbursement methodology or payment system that is of general applicability and implemented through the rulemaking process;

(3) "Appeal" means an appeal of an adverse decision to an independent administrative law judge as provided under this subchapter;

(4) "Claim" means a request for payment of services or for prior, concurrent, or retrospective authorization to provide services;

(5) "Concurrent review" or "concurrent authorization" means a review to determine whether a specified recipient currently receiving specific services may continue to receive services;

(6) "Denial" means denial or partial denial of a claim;

(7) "Department" means:

(A) The Department of Human Services;

(B) All the divisions and programs of the department, including the Arkansas Medicaid Program; and

(C) All the department's contractors, fiscal agents, and other designees and agents;

(8) "Final determination" means a Medicaid overpayment determination:

(A) For which all provider appeals have been exhausted; or

(B) That cannot be appealed or appealed further by the provider because the time to file an appeal has passed;

(9) "Fraud" means an intentional representation that is untrue or made in disregard of its truthfulness for the purpose of inducing reliance in order to obtain or retain anything of value under the Arkansas Medicaid Program;

(10) "Level of care" means:

(A) The level of licensure or certification of the caregiver that is required to provide medically necessary services, for example, a physician or a registered nurse; and

(B) As applicable to the adverse decision:

(i) With respect to medical assistance reimbursed by procedure code or unit of service, the quantity of each medically necessary procedure or unit;

(ii) With respect to durable medical equipment, the type of equipment required and the duration of equipment use; and

(iii) With respect to all other medical assistance, the:

(a) Intensity of service, for example, whether intensive care unit hospital services were required;

(b) Duration of service, for example, the number of days of a hospital stay; or

(c) Setting in which the service is delivered, for example, inpatient or outpatient;

(11) "Medicaid" means the medical assistance program under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq., that is operated by the department, including contractors, fiscal agents, and all other designees and agents;

(12) "Person" means any individual, company, firm, organization, association, corporation, or other legal entity;

(13) "Primary care physician" means a physician whom the department has designated as responsible for the referral or management, or both, of a Medicaid recipient's health care;

(14) "Prior authorization" means the approval by the Arkansas Medicaid Program for specified services for a specified Medicaid recipient before the requested services may be performed and before payment will be made by the Arkansas Medicaid Program;

(15) "Provider" means a person enrolled to provide health or medical care services or goods authorized under the Arkansas Medicaid Program;

(16) "Recoupment" means any action or attempt by the department to recover or collect Medicaid payments already made to a provider with respect to a claim by:

(A) Reducing other payments currently owed to the provider;

(B) Withholding or setting off the amount against current or future payments to the provider;

(C) Demanding payment back from a provider for a claim already paid; or

(D) Reducing or affecting in any other manner the future claim payments to the provider;

(17) "Retrospective review" means the review of services or practice patterns after payment, including, but not limited to:

(A) Utilization reviews;

(B) Medical necessity reviews;

(C) Professional reviews;

(D) Field audits and onsite audits; and

(E) Desk audits;

(18) "Reviewer" means any person, including, but not limited to, reviewers, auditors, inspectors, and surveyors, who in reviewing a provider or a provider's provision of medical assistance, reviews without limitation:

(A) Quality;

(B) Quantity;

(C) Utilization;

(D) Practice patterns;

(E) Medical necessity; and

(F) Compliance with Medicaid laws, regulations, and rules; and

(19)(A) "Technical deficiency" means an error or omission in documentation by a provider that does not affect direct patient care of the recipient.

(B) “Technical deficiency” does not include:

- (i) Lack of medical necessity according to professionally recognized local standards of care;
- (ii) Failure to provide care of a quality that meets professionally recognized local standards of care;
- (iii) Failure to document a mandatory quality measure required for gain sharing or medical home or health home incentive payments as specified in a reimbursement mechanism or methodology;
- (iv) Failure to obtain prior or concurrent authorization if required by regulation;
- (v) Fraud;
- (vi) Abuse;
- (vii) A pattern of noncompliance; or
- (viii) A gross and flagrant violation.

History. Acts 2005, No. 1758, § 1; 2007, No. 596, § 1; 2013, No. 562, §§ 1-3. **Amendments.** The 2013 amendment rewrote (2) and (3); inserted “and Title XXI” in (11); and inserted (19)(B)(iii) and redesignated the remaining subdivisions accordingly.

20-77-1703. Recoupment.

(a)(1) The Department of Human Services shall not use a technical deficiency as grounds for recoupment unless identifying the technical deficiency as an overpayment is mandated by a specific federal statute or regulation or the state is required to repay the funds to the Centers for Medicare & Medicaid Services, or both.

(2) When recoupment is permitted, the department shall not recoup until there is a final determination identifying the funds to be recouped as overpayments.

(b)(1) The department shall recognize that an error or omission is a technical deficiency if:

- (A) The error or omission meets the definition of “technical deficiency” in § 20-77-1702;
- (B) The error or omission involved a covered service; and
- (C) The provider can substantiate through other documentation that the medical assistance was provided.

(2) Other documentation under subdivision (b)(1)(C) of this section shall be:

- (A) In accord with generally accepted healthcare practices; and
- (B) Contemporaneously created.

(3) Other documentation under subdivision (b)(1)(C) of this section is not required to be equivalent in form to, nor required to duplicate, the documentation containing the error or omission, if all the documentation taken together establishes that the claim is payable.

(c) This section does not preclude a corrective action plan or other nonmonetary measure in response to technical deficiencies.

(d)(1) If a provider fails to comply with a corrective action plan for a pattern of technical deficiencies, then appropriate monetary penalties may be imposed if permitted by law.

(2) However, the department first must be clear as to what the technical deficiencies are by providing clear communication in writing or a promulgated rule when required.

(e) The department shall not issue a recoupment on a minor omission such as a missing date or signature if the requirements of this section are met.

(f) The department shall not rely on the denial of one claim as the sole basis for the denial of a subsequent claim and shall establish that the subsequent claim is deficient.

History. Acts 2005, No. 1758, § 1; substituted “Recoupment” for “Technical
2007, No. 596, § 1; 2009, No. 952, § 17; deficiencies” in the section heading; re-
2013, No. 562, § 4. wrote the introductory language of (b)(2);

Amendments. The 2013 amendment and added (b)(3), (e), and (f).

20-77-1704. Provider administrative appeals allowed.

(a) The General Assembly finds it necessary to:

(1) Clarify its intent that providers have the right to fair and impartial administrative appeals; and

(2) Emphasize that this right of appeal is to be liberally construed and not limited through technical or procedural arguments by the Department of Human Services.

(b)(1)(A) In response to an adverse decision, a provider may appeal on behalf of the recipient or on its own behalf, or both, regardless of whether the provider is an individual or a corporation.

(B)(i) A provider appeal shall be governed by the Arkansas Administrative Procedure Act, § 25-15-201 et seq., except as otherwise provided in this subchapter.

(ii) Multiple appeals by the same provider may be consolidated.

(C) An administrative law judge employed by the Department of Health shall conduct all Medicaid provider administrative appeals of adverse decisions under this subchapter.

(2) The provider may appear:

(A) In person or through a corporate representative; or

(B) With prior notice to the Department of Health, through legal counsel.

(3)(A) A Medicaid recipient may attend any hearing related to his or her care, but the Department of Health may not make his or her participation a requirement for provider appeals.

(B) The Department of Health may compel the recipient’s presence via subpoena, but failure of the recipient to appear shall not preclude the provider appeal.

(c)(1) An administrative law judge shall be guided by the need to reach a just determination and may depart from strict adherence to the formal rules of evidence.

(2) An administrative law judge shall exclude irrelevant, immaterial, and unduly repetitious evidence.

(3) An administrative law judge shall receive oral or documentary evidence not privileged if the oral or documentary evidence is of a type

commonly relied upon by a reasonably prudent person in the conduct of his or her affairs.

(4) An administrative law judge shall rule on each evidentiary objection, and the objection and ruling shall be noted of record.

(d)(1)(A) If a provider submits evidence that the Department of Human Services has not had an opportunity to consider before the hearing, an administrative law judge shall continue the hearing for thirty (30) days to allow the Department of Human Services to review the evidence.

(B) An administrative law judge may extend the thirty-day continuance under subdivision (d)(1)(A) of this section for good cause.

(2) Before the end of a continuation under subdivision (d)(1) of this section, the Department of Human Services shall send the provider and the administrative law judge notice stating whether the Department of Human Services will modify its decision with an explanation of the modification.

(3)(A) Unless the provider notifies the administrative law judge and the Department of Human Services that the provider wishes to withdraw its appeal, the administrative law judge shall notify the parties of the date and time at which the hearing will continue.

(B) The date under subdivision (d)(3)(A) of this section shall be no later than thirty (30) days after the Department of Human Services' notification under subdivision (d)(2) of this section.

(e) A provider does not have standing to appeal a decision denying payment or ordering recoupment of payments already made if the provider has not furnished any service for which payment has been denied.

(f)(1) Providers, like Medicaid recipients, have standing to appeal to circuit court unfavorable administrative decisions under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) The Department of Human Services may seek judicial review of a final, appealable order issued by an administrative law judge.

(g) Burdens of proof shall be determined under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(h)(1)(A) A final decision by an administrative law judge in favor of a provider is a final appealable order.

(B) A final decision under this section shall not be overturned by the Director of the Division of Medical Services of the Department of Human Services or another official within the Department of Human Services.

(2)(A) Within thirty (30) days after August 16, 2013, the Department of Human Services shall request a waiver from the Centers for Medicare & Medicaid Services of the single state agency requirement contained in 42 C.F.R. § 431.10 to allow final decisions in Medicaid provider administrative appeals to be issued by an administrative law judge in a separate agency.

(B) An administrative law judge shall follow the rules adopted by the Department of Human Services in making final decisions.

(3) The Department of Human Services shall make available to the public all communications with regard to the waiver application under subdivision (h)(2)(A) of this section and shall work jointly with provider representatives to obtain and maintain approval for the waiver.

(i)(1) Until the waiver under subdivision (h)(2) of this section is approved, an administrative law judge's decision shall constitute a recommended decision to the Director of the Division of Medical Services.

(2)(A) The Director of the Division of Medical Services, upon a review of the record submitted by an administrative law judge, shall adopt, reject, or modify the recommended decision.

(B) A modification or rejection of an administrative law judge's decision shall state with particularity the reasons for the modification or rejection, shall include references to the record, and shall constitute the final decision.

(C) As an alternative to the process under subdivision (i)(2)(B) of this section, the Director of the Division of Medical Services may remand the decision to the administrative law judge with additional guidance on Medicaid policy.

(3)(A) The Director of the Division of Medical Services shall issue a final decision under this subsection within thirty (30) days after receipt of the administrative law judge's decision.

(B) Unless the Director of the Division of Medical Services modifies or rejects the recommended decision of the administrative law judge within thirty (30) days after receipt of the administrative law judge's decision, the recommended decision is the final decision.

(j) If an administrative appeal is filed by both provider and recipient concerning the same subject matter, then the department may consolidate the appeals.

(k)(1) This subchapter shall apply to all pending and subsequent appeals that have not been finally resolved at the administrative or judicial level as of April 5, 2005.

(2) The amendatory provisions of this act apply to a pending and subsequent appeal that has not been finally resolved at the administrative or judicial level on August 16, 2013.

History. Acts 2005, No. 1758, § 1; 2013, No. 562, § 4.

Amendments. The 2013 amendment inserted "fair and impartial" in (a)(1); deleted "under the Arkansas Administrative Procedure Act, § 25-15-201 et seq." following "or both" in (b)(1)(A); added (b)(1)(B)

and (C); inserted (c) and (d) and redesignated the remaining subsections accordingly; rewrote present (e); added (f)(2); inserted (g) through (i) and redesignated the remaining subsections accordingly; and added (k)(2).

CASE NOTES

Subject-Matter Jurisdiction.

This section, as amended, does not state that the final administrative decision will be made by the Director of the Arkansas

Department of Health, which would indicate that subject-matter jurisdiction has been removed from the Arkansas Department of Human Services (DHS); rather, it

provides that an administrative law judge from the Department of Health shall follow DHS's rules in making final decisions. Therefore, in a Medicaid dispute involving a hospice provider, an argument relating to this section was not preserved for re-

view where it was not raised at the agency level and the exception for issues of subject-matter jurisdiction did not apply. *Odyssey Healthcare Operating A. LP v. Ark. Dep't of Human Servs.*, 2015 Ark. App. 459, 469 S.W.3d 381 (2015).

20-77-1705. Explanations for adverse decisions required.

Each denial or other deficiency that the Department of Human Services makes against a Medicaid provider shall be prepared in writing and shall specify:

- (1) The nature of the adverse decision;
- (2) The statutory provision or specific rule alleged to have been violated; and
- (3) The facts and grounds that form the basis for the adverse decision.

History. Acts 2005, No. 1758, § 1; 2007, No. 596, § 2.

20-77-1706. Reimbursement at an alternate level instead of complete denial.

(a)(1)(A) Subject to § 20-77-1707 for retrospective reviews, if the Department of Human Services has sufficient documentation to determine that some level of care other than the level that was claimed is medically necessary, then the department may recoup.

(B) However, the provider shall be entitled to file a second claim at the level that was medically necessary according to the department's explanation for recoupment.

(C) Alternatively, the department may recoup the difference between the amount previously paid and the amount that would be payable for the care deemed to be medically necessary.

(2)(A) If the department does not have sufficient documentation to determine the level of care that was medically necessary, the department shall not recoup at that time, but shall request from the provider additional documentation the department needs to determine the level of care that was medically necessary.

(B) After receiving documentation requested under subdivision (a)(2)(A) of this section, the department shall review the documentation and determine whether to proceed with a recoupment and notice, subject to § 20-77-1707.

(3)(A) No physician referral shall be required as a condition of payment for care that is determined to be medically necessary upon a review conducted under this section.

(B) A requirement for a referral from a primary care physician shall not be imposed retroactively.

(4)(A) The recoupment notice from the department under subdivisions (a)(1) and (2) of this section shall explain the reason for the

recoupment under § 20-77-1705 and shall include one (1) of the following statements:

(i) "In the reviewer's professional judgment, the documentation submitted establishes that the following care, treatment, or evaluation was medically necessary: _____."; or

(ii) "In the reviewer's professional judgment, the documentation submitted does not establish that any care, service, or evaluation was medically necessary."

(B) For purposes of this subdivision (a)(4), "care" may include referrals to healthcare professionals.

(5) A provider's decision to file a second claim at the level of care approved by the reviewer or the department's decision to recoup rather than requiring a second claim does not waive the provider's or recipient's right to appeal the denial of the original claim if the provider disagrees with the department's determination.

(b)(1) For concurrent or prior authorization, if the department has sufficient documentation to establish that some level of care other than the requested level is medically necessary, the department shall approve the request at the other level of care with proper notice.

(2)(A) If the department does not have sufficient documentation to determine the level of care that is medically necessary, the department shall not deny the claim at that time but shall request from the provider the additional documentation the department needs to determine the level of care that is medically necessary.

(B) The department shall then:

(i) Review the request; and

(ii) If the department denies the request, explain the reason for the denial in accordance with subdivision (b)(4) of this section.

(3)(A) No physician referral shall be required as a condition of payment for care that is determined to be medically necessary upon a review conducted under this section.

(B) A requirement for a referral from a primary care physician shall not be imposed retroactively.

(4)(A) The denial notice from the department under subdivisions (b)(1) and (2) of this section shall explain the reason for the denial as required by § 20-77-1705 and shall include one (1) of the following statements:

(i) "In the reviewer's professional judgment, the documentation submitted establishes that the following care, treatment, or evaluation was medically necessary: _____."; or

(ii) "In the reviewer's professional judgment, the documentation submitted does not establish that any care, service, or evaluation was medically necessary."

(B) For purposes of this subdivision (b)(4), "care" may include referrals to healthcare professionals.

(5) The department's decision to approve a request at another level of care under this subsection does not remove the provider's or recipient's right to appeal the denial of the original claim if the provider disagrees with the department's determination.

- (c)(1) Subsections (a) and (b) of this section apply only:
 - (A) In the absence of fraud or abuse; and
 - (B) If the care is furnished by a provider legally qualified and authorized to deliver the care.
- (2) Nothing prevents the department from reviewing the claim for reasons unrelated to level of care and taking action that may be warranted by the review, subject to other provisions of law.

History. Acts 2005, No. 1758, § 1; 2007, No. 596, § 2.

20-77-1707. Prior authorizations — Retrospective reviews.

- If the Department of Human Services requires a provider to justify the medical necessity of a service through prior authorization, the department shall not later take the position that the services were not medically necessary, unless the retrospective review establishes that:
- (1) The previous authorization was based upon misrepresentation by act or omission;
 - (2) The services billed were not provided; or
 - (3) An unexpected change occurred that rendered the prior-authorized care not medically necessary.

History. Acts 2005, No. 1758, § 1; 2013, No. 562, § 5.
A.C.R.C. Notes. The 2013 amendment omitted “(B) If the facts had been known, the specific level of care would not have been authorized; or” in subdivision (1)

without striking through the language to indicate its repeal. It appears it was intended to be repealed by this act.
Amendments. The 2013 amendment rewrote the section.

20-77-1708. Medical necessity.

- (a) There is a presumption in favor of the medical judgment of the performing or prescribing physician in determining medical necessity of treatment.
- (b) If an administrative law judge finds that the Department of Human Services has overcome the presumption under subsection (a) of this section, he or she shall state the manner by which the presumption was overcome.

History. Acts 2005, No. 1758, § 1; 2007, No. 596, § 3; 2013, No. 562, § 5.

Amendments. The 2013 amendment added the (a) designation and added (b).

CASE NOTES

Presumption.
 This section makes it clear that the presumption in favor of a treating physician in determining medical necessity is rebuttable by directing the administrative law judge to “state the manner by which the presumption was overcome”; therefore, in a Medicaid dispute involving a

hospice provider, an administrative law judge complied with this section by making specific findings as to each patient whether the presumption had been overcome by the evidence and testimony. *Odyssey Healthcare Operating A. LP v. Ark. Dep’t of Human Servs.*, 2015 Ark. App. 459, 469 S.W.3d 381 (2015).

20-77-1709. Promulgation before enforcement.

(a) The Department of Human Services may not use state policies, guidelines, manuals, or other such criteria in enforcement actions against providers unless the criteria have been promulgated.

(b) Nothing in this section requires or authorizes the department to attempt to promulgate standards of care that practitioners use in determining medical necessity or rendering medical decisions, diagnoses, or treatment.

(c) Medicaid contractors may not use a different provider manual than the Centers for Medicare & Medicaid Services Provider Reimbursement Manual promulgated for each service category.

History. Acts 2005, No. 1758, § 1;
2007, No. 596, § 4.

20-77-1710. Delivery of files.

(a) If the Department of Human Services makes an adverse decision in a Medicaid case and a provider then lodges an administrative appeal, the department shall deliver to the provider well in advance of the appeal its file on the matter so that the provider will have time to prepare for the appeal.

(b) The file shall include the records of any utilization review contractor or other agent, subject to any other federal or state law regarding confidentiality restrictions.

History. Acts 2005, No. 1758, § 1.

20-77-1711. Copies of records to be supplied to department — Exception.

(a) Except as provided in subsection (b) of this section, providers must supply records to the Department of Human Services at their own cost.

(b) If the provider has supplied records to the department and the provider identifies to whom the records were supplied, the provider is not required to provide a second copy of the records at its own cost.

History. Acts 2005, No. 1758, § 1;
2007, No. 596, § 5.

20-77-1712. Notices.

When the Department of Human Services sends letters or other forms of notice with deadlines to providers or recipients, the deadline shall not begin to run before the next business day following the date of the postmark on the envelope, the facsimile transmission confirmation sheet, or the electronic record confirmation, unless otherwise required by federal statute or regulation.

History. Acts 2005, No. 1758, § 1.

20-77-1713. Deadlines.

(a) The Department of Human Services may not issue a claim denial or demand for recoupment to providers for missing a deadline if the department or its contractor contributed to the delay or the delay was reasonable under the circumstances, including, but not limited to:

- (1) Intervening weekends or holidays;
- (2) Lack of cooperation by third parties;
- (3) Natural disasters; or
- (4) Other extenuating circumstances.

(b) This section is subject to good faith on the part of the provider.

History. Acts 2005, No. 1758, § 1.

20-77-1714. Hospital claims.

(a) When more than one (1) hospital provides services to a recipient and the amount of claims exceeds the recipient's benefit limit, then the hospitals are entitled to reimbursement based on the earliest date of service.

(b) If the claims have been paid by Medicaid contrary to this provision and voluntary coordination among the hospitals involved does not resolve the matter, then the hospitals shall resort to mediation or arbitration at the hospitals' expense.

History. Acts 2005, No. 1758, § 1;
2007, No. 596, § 6.

20-77-1715. Federal law.

(a) If any provision of this subchapter is found to conflict with current federal law, including promulgated federal regulations, the federal law shall override that provision.

(b) If under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., or Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq., the United States Government recovers an erroneous or improper medical assistance payment from the Department of Human Services, the department may recover the erroneous or improper medical assistance payment from the provider that received the payment or from a successor in interest who is legally responsible for the erroneous or improper medical assistance payment.

History. Acts 2005, No. 1758, § 1;
2013, No. 562, § 6.

Amendments. The 2013 amendment added the (a) designation and added (b).

20-77-1716. Promulgation of rules.

The Department of Human Services may promulgate rules to implement this subchapter.

History. Acts 2007, No. 596, § 7.

20-77-1717. Timelines for audits.

(a) If a Medicaid provider audit by the federal Medicaid Integrity Program or Audit Medicaid Integrity Contractors is conducted, the Department of Human Services or the contractor shall provide the audit report to the provider within one hundred fifty (150) days after the completion of the audit field work.

(b) If a provider requests an administrative reconsideration of an audit finding or report, the department shall provide the results of the reconsideration within sixty (60) days after the department's receipt of the request for reconsideration.

(c) Additional provider records furnished by a provider in conjunction with a provider's request for administrative reconsideration shall have been contemporaneously created.

(d) If there is a failure to meet the timelines specified in this section, no adverse decision based on the noncompliant audit shall be enforced against the provider unless the department shows good cause for the failure to meet the timelines.

History. Acts 2013, No. 562, § 7.

20-77-1718. Termination — Appeals.

(a) A Medicaid provider that is aggrieved by an adverse decision of the Department of Human Services with respect to termination of the provider's certification or Medicaid provider agreement or an action by the department that has the same effect as terminating the provider's certification or Medicaid provider agreement for more than fifteen (15) days may appeal the decision to Pulaski County Circuit Court or in a circuit court in a county in which the provider resides or does business, regardless of whether all administrative remedies have been exhausted.

(b) Pending a determination by the circuit court of the matter on appeal, the provider is entitled to an injunction preserving the provider's Medicaid participation upon showing that immediate and irreparable injury, loss, or damage to the provider will result, unless the circuit court determines that preserving the provider's participation is likely to pose a danger to the health or safety of beneficiaries.

(c) This section does not apply to an adverse decision resulting from the department's determination that there is a credible allegation of fraud for which an investigation is pending.

History. Acts 2013, No. 562, § 7.

SUBCHAPTER 18 — ARKANSAS LONG-TERM CARE PARTNERSHIP PROGRAM

SECTION.

20-77-1801. Findings.
20-77-1802. Definitions.
20-77-1803. Arkansas Long-Term Care
Partnership Program —
Created.

SECTION.

20-77-1804. Applicability.
20-77-1805. Continuity of asset protec-
tion.

20-77-1801. Findings.

The General Assembly finds that in order to alleviate the financial burden on the state's Medicaid program, the state must encourage better access to and utilization of affordable long-term care insurance that will pay for some or all of the cost of long-term care services.

History. Acts 2007, No. 99, § 1.

20-77-1802. Definitions.

As used in this subchapter:

(1) "Long-term care facility" means a facility required to be licensed under § 20-10-224;

(2) "Long-term care insurance" means the same as in § 23-97-304; and

(3) "Long-term care services" means the following necessary services that originate in a setting other than an acute care hospital and that are provided to individuals whose functional capacities are chronically impaired:

(A) Physician's services;

(B) Nursing services;

(C) Diagnostic services;

(D) Therapeutic services including physical therapy, speech therapy, and occupational therapy;

(E) Rehabilitative services;

(F) Maintenance services;

(G) Personal care services individually designed to assist with an individual's physical dependency needs related to bathing, bladder and bowel requirements, dressing, eating, personal hygiene, medications, mobility, incidental housekeeping, laundry, and shopping for personal maintenance items;

(H) Transportation services;

(I) Day care services;

(J) Respite care services; and

(K) Services provided by chiropractors, podiatrists, and optometrists.

History. Acts 2007, No. 99, § 1.

20-77-1803. Arkansas Long-Term Care Partnership Program — Created.

(a) The Arkansas Long-Term Care Partnership Program is created within the Department of Human Services.

(b) The Department of Human Services in cooperation with the Insurance Commissioner shall submit applications to the United States Department of Health and Human Services necessary to obtain approval to:

(1) Establish a process for precertification of long-term care insurance policies that meets all the requirements of the program;

(2) Establish minimum requirements that long-term care insurance policies shall meet in order to qualify for precertification, including without limitation:

(A) A conspicuous provision alerting consumers to the availability of consumer information and public education provided by the Department of Human Services;

(B) A guarantee that each insured has an option to cover home and community-based services in addition to nursing facility care;

(C) Inflation protection;

(D) Periodic reporting to include explanations of benefits and a record of insurance payments that count toward Medicaid resource exclusion; and

(E) Reports to the program as the Department of Human Services may require;

(3) Include provisions for reciprocal agreements with other states to extend the Medicaid eligibility protections in subdivision (b)(4) of this section to purchasers of long-term care policies in those states, if at the time the long-term care policies were issued, the policies qualified for precertification in this state;

(4) Include provisions that Medicaid eligibility determinations in the long-term care or related waiver categories for individuals who are the beneficiaries of precertified long-term care insurance policies shall include a resource disregard of one dollar (\$1.00) for every dollar of long-term care insurance benefits paid under the individual's prequalified long-term care insurance policy for long-term care services; and

(5) Include an outreach program to educate consumers about the need for long-term care, the availability of long-term care insurance, and the asset protections available under this subsection.

History. Acts 2007, No. 99, § 1.

20-77-1804. Applicability.

This subchapter does not supersede the obligations under the Long-Term Care Insurance Act of 2005, § 23-97-301 et seq.

History. Acts 2007, No. 99, § 1.

20-77-1805. Continuity of asset protection.

If this subchapter is repealed, any Medicaid asset protection afforded under § 20-77-1803 shall remain effective for the life of the individual receiving long-term care services under this subchapter.

History. Acts 2007, No. 99, § 1.

**SUBCHAPTER 19 — ASSESSMENT FEE ON HOSPITALS TO IMPROVE
HEALTHCARE ACCESS**

SECTION.	SECTION.
20-77-1901. Definitions.	20-77-1907. Notice of assessment.
20-77-1902. Assessment.	20-77-1908. Medicaid hospital access payments.
20-77-1903. Program administration.	20-77-1909. Effectiveness and cessation.
20-77-1904. Hospital Assessment Account.	20-77-1910. State plan amendment.
20-77-1905. Exemptions.	
20-77-1906. Quarterly notice and collection.	

Effective Dates. Acts 2009, No. 562, § 2: Mar. 24, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that hospitals are struggling to remain viable in providing access to health care services and the payments created in this act will allow hospitals to provide access to quality health care for the citizens of Arkansas. Therefore, an emergency is declared to exist and this act

being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

20-77-1901. Definitions.

As used in this subchapter:

- (1) “Division” means the Division of Medical Services of the Department of Human Services;
- (2) “Hospital” means a health care facility licensed as a hospital by the Division of Health Facilities Services under § 20-9-213;
- (3) “Medicare Cost Report” means CMS-2552-96, the Cost Report for Electronic Filing of Hospitals, as it existed on January 1, 2009;
- (4) “Net patient revenue” means the amount calculated in accordance with generally accepted accounting principles for hospitals that is reported on Worksheet G-3, Column 1, Line 3, of the Medicare Cost Report adjusted to exclude nonhospital revenue;
- (5)(A) “Nonstate government-owned hospital” means a hospital that is owned and operated by an agency or a unit of a county or municipal government, including without limitation a hospital owned and operated by:

(i) A county under § 14-263-101 et seq.; or

(ii) A city under § 14-264-101 et seq.

(B) “Nonstate government-owned hospital” does not include a hospital that is owned by an agency or unit of county or municipal government but is contracted or leased to an individual, firm, or corporation that is not a government entity;

(6) “Privately operated hospital” means a licensed hospital in Arkansas other than:

(A) Any hospital that is owned and operated by the United States Government;

(B) Any hospital that is an agency or a unit of state government, including without limitation a hospital owned by a state agency or a state university; and

(C) Any nonstate government-owned hospital;

(7) “Specialty hospital” means an acute care general hospital that:

(A) Limits services primarily to children and qualifies as exempt from the Medicare prospective payment system regulation; or

(B) Is primarily or exclusively engaged in the care and treatment of patients with cardiac conditions;

(8) “State plan amendment” means a change or update to the state Medicaid plan;

(9) “Upper payment limit” means the maximum ceiling imposed by federal regulation on privately owned hospital Medicaid reimbursement for inpatient services under 42 C.F.R. § 447.272 and outpatient services under 42 C.F.R. § 447.321; and

(10)(A) “Upper payment limit gap” means the difference between the upper payment limit and Medicaid payments not financed using hospital assessments made to all privately operated hospitals.

(B) The upper payment limit gap shall be calculated separately for hospital inpatient and outpatient services.

(C) Medicaid disproportionate share payments shall be excluded from the calculation of the upper payment limit gap.

History. Acts 2009, No. 562, § 1.

20-77-1902. Assessment.

(a)(1) An assessment is imposed on each hospital except those exempted under § 20-77-1905 for each state fiscal year in an amount calculated as a percentage of each hospital’s net patient revenue.

(2) The assessment rate shall be determined annually based upon the percentage of net patient revenue needed to generate an amount up to the nonfederal portion of the upper payment limit gap plus the annual fee to be paid to Medicaid under § 20-77-1904(f)(1)(C), but in no case at a rate that would cause the assessment proceeds to exceed the indirect guarantee threshold set forth in 42 C.F.R. § 433.68(f)(3)(i).

(b)(1)(A) Except as set forth in subdivision (b)(1)(B) or subdivision (b)(1)(C) of this section, for state fiscal year 2010, net patient revenue shall be determined using the data from each hospital’s fiscal year

2007 Medicare Cost Report contained in the Centers for Medicare & Medicaid Services' Healthcare Cost Report Information System file dated June 30, 2008.

(B) If a hospital's fiscal year 2007 Medicare Cost Report is not contained in the Centers for Medicare & Medicaid Services' Healthcare Cost Report Information System file dated June 30, 2008, the hospital shall submit a copy of the hospital's 2007 Medicare Cost Report to the Division of Medical Services of the Department of Human Services in order to allow the division to determine the hospital's net patient revenue for state fiscal year 2010.

(C) If a hospital commenced operations after the due date for a 2007 Medicare Cost Report, the hospital shall submit its 2008 Medicare Cost Report to the division in order to allow the division to determine the hospital's net patient revenue for state fiscal year 2010.

(2) For each subsequent state fiscal year, net patient revenue shall be calculated using the data from each hospital's most recent audited Medicare Cost Report available at the time of the calculation.

(3)(A) If the audited cost report available under subdivision (b)(2) of this section is more than two (2) years old, the division may elect to use the most recent Medicare Cost Report available at the time of the calculation.

(B) In the event that the division makes an election under subdivision (b)(3)(A) of this section, the division shall use the same Medicare Cost Report for the purposes of calculations under § 20-77-1908.

(c) This subchapter does not authorize a unit of county or local government to license for revenue or impose a tax or assessment upon hospitals or a tax or assessment measured by the income or earnings of a hospital.

History. Acts 2009, No. 562, § 1; 2011, No. 19, § 1; 2015, No. 1141, § 1.

Amendments. The 2015 amendment added (b)(3)(A) and (B).

20-77-1903. Program administration.

(a) The Director of the Division of Medical Services of the Department of Human Services shall administer the assessment program created in this subchapter.

(b)(1) The Division of Medical Services of the Department of Human Services shall adopt rules to implement this subchapter.

(2) Unless otherwise provided in this subchapter, the rules adopted under subdivision (b)(1) of this section shall not grant any exceptions to or exemptions from the hospital assessment imposed under § 20-77-1902.

(3) The rules adopted under subdivision (b)(1) of this section shall include any necessary forms for:

(A) Proper imposition and collection of the assessment imposed under § 20-77-1902;

(B) Enforcement of this subchapter, including without limitation letters of caution or sanctions; and

(C) Reporting of net patient revenue.

(c) To the extent practicable, the division shall administer and enforce this subchapter and collect the assessments, interest, and penalty assessments imposed under this subchapter using procedures generally employed in the administration of the division's other powers, duties, and functions.

History. Acts 2009, No. 562, § 1; 2011, No. 19, § 2.

20-77-1904. Hospital Assessment Account.

(a)(1) There is created within the Arkansas Medicaid Program Trust Fund a designated account known as the "Hospital Assessment Account".

(2) The hospital assessments imposed under § 20-77-1902 shall be deposited into the Hospital Assessment Account.

(b) Moneys in the Hospital Assessment Account shall consist of:

(1) All moneys collected or received by the Division of Medical Services of the Department of Human Services from hospital assessments imposed under § 20-77-1902;

(2) Any interest or penalties levied in conjunction with the administration of this subchapter; and

(3) Any appropriations, transfers, donations, gifts, or moneys from other sources, as applicable.

(c) The Hospital Assessment Account shall be separate and distinct from the General Revenue Fund Account of the State Apportionment Fund and shall be supplementary to the Arkansas Medicaid Program Trust Fund.

(d) Moneys in the Hospital Assessment Account shall not be used to replace other general revenues appropriated and funded by the General Assembly or other revenues used to support Medicaid.

(e) The Hospital Assessment Account shall be exempt from budgetary cuts, reductions, or eliminations caused by a deficiency of general revenues.

(f)(1) Except as necessary to reimburse any funds borrowed to supplement funds in the Hospital Assessment Account, the moneys in the Hospital Assessment Account shall be used only as follows:

(A) To make inpatient and outpatient hospital access payments under § 20-77-1908;

(B) To reimburse moneys collected by the division from hospitals through error or mistake or under this subchapter; or

(C) To pay an annual fee to the division in the amount of three and three-quarters percent (3.75%) of the assessments collected from hospitals under § 20-77-1902 each state fiscal year.

(2)(A) The Hospital Assessment Account shall retain account balances remaining each fiscal year.

(B) At the end of each fiscal year, any positive balance remaining in the Hospital Assessment Account shall be factored into the calculation of the new assessment rate by reducing the amount of hospital assessment funds that must be generated during the subsequent fiscal year.

(3) A hospital shall not be guaranteed that its inpatient and outpatient hospital access payments will equal or exceed the amount of its hospital assessment.

History. Acts 2009, No. 562, § 1.

20-77-1905. Exemptions.

(a) The following hospitals shall be exempt from the assessment imposed under § 20-77-1902 unless the exemption is adjudged to be unconstitutional or otherwise determined to be invalid:

(1) Hospitals that are not privately operated hospitals;

(2) Hospitals licensed by the Department of Health as rehabilitation hospitals; and

(3) Specialty hospitals.

(b) If an exemption under subsection (a) of this section is adjudged to be unconstitutional or otherwise determined to be invalid, the applicable hospitals shall pay the assessment imposed under § 20-77-1902.

History. Acts 2009, No. 562, § 1.

20-77-1906. Quarterly notice and collection.

(a)(1) The annual assessment imposed under § 20-77-1902 shall be due and payable on a quarterly basis.

(2) However, an installment payment of an assessment imposed by § 20-77-1902 shall not be due and payable until:

(A) The Division of Medical Services of the Department of Human Services issues the written notice required by § 20-77-1907(a) stating that the payment methodologies to hospitals required under § 20-77-1908 have been approved by the Centers for Medicare & Medicaid Services and the waiver under 42 C.F.R. § 433.68 for the assessment imposed by § 20-77-1902, if necessary, has been granted by the Centers for Medicare & Medicaid Services;

(B) The thirty-day verification period required by § 20-77-1907(b) has expired; and

(C) The division has made all quarterly installments of inpatient and outpatient hospital access payments that were otherwise due under § 20-77-1908 consistent with the effective date of the approved state plan amendment and waiver.

(3) After the initial installment has been paid under this section, each subsequent quarterly installment payment of an assessment imposed by § 20-77-1902 shall be due and payable within ten (10) business days after the hospital has received its inpatient and outpa-

tient hospital access payments due under § 20-77-1908 for the applicable quarter.

(b) The payment by the hospital of the assessment created in this subchapter shall be reported as an allowable cost for Medicaid reimbursement purposes.

(c)(1) If a hospital fails to timely pay the full amount of a quarterly assessment, the division shall add to the assessment:

(A) A penalty assessment equal to five percent (5%) of the quarterly amount not paid on or before the due date; and

(B) On the last day of each quarter after the due date until the assessed amount and the penalty imposed under subdivision (c)(1)(A) of this section are paid in full, an additional five percent (5%) penalty assessment on any unpaid quarterly and unpaid penalty assessment amounts.

(2) Payments shall be credited first to unpaid quarterly amounts, rather than to penalty or interest amounts, beginning with the most delinquent installment.

(3) If the division is unable to recoup from Medicaid payments the full amount of any unpaid assessment or penalty assessment, or both, the division may file suit in a court of competent jurisdiction to collect up to double the amount due, the division's costs related to the suit and reasonable attorney's fees.

History. Acts 2009, No. 562, § 1; 2011, No. 19, § 3.

20-77-1907. Notice of assessment.

(a)(1) The Division of Medical Services of the Department of Human Services shall send a notice of assessment to each hospital informing the hospital of the assessment rate, the hospital's net patient revenue calculation, and the estimated assessment amount owed by the hospital for the applicable fiscal year.

(2) Except as set forth in subdivision (a)(3) of this section, annual notices of assessment shall be sent at least forty-five (45) days before the due date for the first quarterly assessment payment of each fiscal year.

(3) The first notice of assessment shall be sent within forty-five (45) days after receipt by the division of notification from the Centers for Medicare & Medicaid Services that the payments required under § 20-77-1908 and, if necessary, the waiver granted under 42 C.F.R. § 433.68 have been approved.

(b) The hospital shall have thirty (30) days from the date of its receipt of a notice of assessment to review and verify the assessment rate, the hospital's net patient revenue calculation, and the estimated assessment amount.

(c)(1) If a hospital provider operates, conducts, or maintains more than one (1) hospital in the state, the hospital provider shall pay the assessment for each hospital separately.

(2) However, if the hospital provider operates more than one (1) hospital under one (1) Medicaid provider number, the hospital provider may pay the assessment for the hospitals in the aggregate.

(d)(1) For a hospital subject to the assessment imposed under § 20-77-1902 that ceases to conduct hospital operations or maintain its state license or did not conduct hospital operations throughout a state fiscal year, the assessment for the state fiscal year in which the cessation occurs shall be adjusted by multiplying the annual assessment computed under § 20-77-1902 by a fraction, the numerator of which is the number of days during the year that the hospital operated and the denominator of which is three hundred sixty-five (365).

(2)(A) Immediately upon ceasing to operate, the hospital shall pay the adjusted assessment for that state fiscal year to the extent not previously paid.

(B) The hospital also shall receive payments under § 20-77-1908 for the state fiscal year in which the cessation occurs, which shall be adjusted by the same fraction as its annual assessment.

(e) A hospital subject to an assessment under this subchapter that has not been previously licensed as a hospital in Arkansas and that commences hospital operations during a state fiscal year shall pay the required assessment computed under § 20-77-1902 and shall be eligible for hospital access payments under § 20-77-1908 on the date specified in rules promulgated by the division under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f) A hospital that is exempted from payment of the assessment under § 20-77-1905 at the beginning of a state fiscal year but during the state fiscal year experiences a change in status so that it becomes subject to the assessment shall pay the required assessment computed under § 20-77-1902 and shall be eligible for hospital access payments under § 20-77-1908 on the date specified in rules promulgated by the division under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(g) A hospital that is subject to payment of the assessment computed under § 20-77-1902 at the beginning of a state fiscal year but during the state fiscal year experiences a change in status so that it becomes exempted from payment under § 20-77-1905 shall be relieved of its obligation to pay the hospital assessment and shall become ineligible for hospital access payments under § 20-77-1908 on the date specified in rules promulgated by the division under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2009, No. 562, § 1.

20-77-1908. Medicaid hospital access payments.

(a) To preserve and improve access to hospital services, for hospital inpatient and outpatient services rendered on or after July 1, 2009, the Division of Medical Services of the Department of Human Services shall make hospital access payments as set forth in this section.

(b) The division shall calculate the hospital access payment amount up to but not to exceed the upper payment limit gap for inpatient and outpatient services.

(c)(1) All hospitals shall be eligible for inpatient and outpatient hospital access payments each state fiscal year as set forth in this subsection other than hospitals described in § 20-77-1905.

(2)(A) A portion of the hospital access payment amount, not to exceed the upper payment limit gap for inpatient services, shall be designated as the inpatient hospital access payment pool.

(B) In addition to any other funds paid to hospitals for inpatient hospital services to Medicaid patients, each eligible hospital shall receive inpatient hospital access payments each state fiscal year equal to the hospital's pro rata share of the inpatient hospital access payment pool based upon the hospital's Medicaid discharges for the most recent audited fiscal period divided by the total number of Medicaid discharges of all eligible hospitals.

(C) Inpatient hospital access payments shall be made on a quarterly basis.

(3)(A) A portion of the hospital access payment amount, not to exceed the upper payment limit gap for outpatient services, shall be designated as the outpatient hospital access payment pool.

(B)(i) In addition to any other funds paid to hospitals for outpatient hospital services to Medicaid patients, each eligible hospital shall receive outpatient hospital access payments each state fiscal year equal to a percentage adjustment determined by dividing the outpatient hospital access payment pool by Medicaid payments for outpatient services paid to all eligible hospitals.

(ii) The percentage adjustment shall be multiplied by the Medicaid payments for outpatient services paid to the eligible hospital in order to determine the amount of each eligible hospital's outpatient hospital access payment.

(C) Outpatient hospital access payments shall be made on a quarterly basis.

(d) A hospital access payment shall not be used to offset any other payment by Medicaid for hospital inpatient or outpatient services to Medicaid beneficiaries, including without limitation any fee-for-service, per diem, private hospital inpatient adjustment, or cost-settlement payment.

History. Acts 2009, No. 562, § 1; 2011, No. 1121, § 14.

20-77-1909. Effectiveness and cessation.

(a) The assessment imposed under § 20-77-1902 shall cease to be imposed, the Medicaid hospital access payments made under § 20-77-1908 shall cease to be paid, and any moneys remaining in the Hospital Assessment Account in the Arkansas Medicaid Program Trust Fund

shall be refunded to hospitals in proportion to the amounts paid by them if:

(1) The inpatient or outpatient hospital access payments required under § 20-77-1908 are changed or the assessments imposed under § 20-77-1902 are not eligible for federal matching funds under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., or Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq.; or

(2) It is determined in the course of an administrative adjudication or in an action under § 25-15-207 that the Division of Medical Services of the Department of Human Services:

(A) Established Medicaid hospital payment rates that include an offset, in whole or in part, for any hospital access payments under § 20-77-1908; or

(B) Included the net effect of any hospital access payment under § 20-77-1908 when considering whether Medicaid hospital payment rates are:

(i) Consistent with efficiency, economy, and quality of care; and

(ii) Sufficient to enlist enough providers so that Medicaid care and services are available at least to the extent that the care and services are available to the general population in the geographic area.

(b)(1) The assessment imposed under § 20-77-1902 shall cease to be imposed and the Medicaid hospital access payments under § 20-77-1908 shall cease to be paid if the assessment is determined to be an impermissible tax under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.

(2) Moneys in the Hospital Assessment Account in the Arkansas Medicaid Program Trust Fund derived from assessments imposed before the determination described in subdivision (b)(1) of this section shall be disbursed under § 20-77-1908 to the extent federal matching is not reduced due to the impermissibility of the assessments, and any remaining moneys shall be refunded to hospitals in proportion to the amounts paid by them.

History. Acts 2009, No. 562, § 1; 2011, No. 19, § 4.

20-77-1910. State plan amendment.

(a) The Division of Medical Services of the Department of Human Services shall file with the Centers for Medicare & Medicaid Services a state plan amendment to implement the requirements of this subchapter, including the payment of hospital access payments under § 20-77-1908, no later than forty-five (45) days after March 24, 2009.

(b) If the state plan amendment is not approved by the Centers for Medicare & Medicaid Services, the division shall:

(1) Not implement the assessment imposed under § 20-77-1902; and

(2) Return any assessment fees to the hospitals that paid the fees if assessment fees have been collected.

History. Acts 2009, No. 562, § 1.

**SUBCHAPTER 20 — ARKIDS FIRST MEDICAL ASSISTANCE PROGRAMS
ENROLLMENT AND RETENTION IMPROVEMENT PROGRAM**

SECTION.

20-77-2001. Findings.

20-77-2002. Administration.

SECTION.

20-77-2003. ARKids First enrollment and renewals.

A.C.R.C. Notes. Acts 2011, No. 771, § 2, provided: “This subchapter shall be implemented only if and to the extent that the Department of Human Services can obtain the necessary waiver approval

from the Centers for Medicare and Medicaid Services and that the required state general revenue to support these initiatives is made available.”

20-77-2001. Findings.

The General Assembly finds that:

(1) Almost two-thirds ($\frac{2}{3}$) of the state’s uninsured children are already eligible for either ARKids First A or B, but many are not enrolled or do not remain enrolled;

(2) Twenty thousand (20,000) children annually are dropped from the ARKids First A or B programs because of procedural requirements, not through a change in eligibility;

(3) The Children’s Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, offers financial incentives to states that adopt measures to streamline enrollment and reenrollment in their Medicaid programs;

(4) Other states have found that simplifying enrollment and reenrollment for families can also save the state administrative costs through improved use of technology and more efficient use of databases and resources already available to the state; and

(5) Working to enroll all eligible children can help to inform planning efforts to effectively enroll newly eligible adults in Medicaid or private insurance as the state implements the Patient Protection and Affordable Care Act, Pub. L. No. 111-148.

History. Acts 2011, No. 771, § 1; 2013, No. 1132, § 52.

in (5), inserted “Patient Protection and” and “Pub. L. No. 111-148”.

Amendments. The 2013 amendment,

20-77-2002. Administration.

(a) In administering the ARKids First A and B programs, the Department of Human Services shall:

(1) Work to increase enrollment among eligible uninsured children under nineteen (19) years of age;

(2) Work to improve retention of coverage among eligible uninsured children under nineteen (19) years of age;

(3) Design the application and annual renewal processes to minimize administrative barriers for applicants and enrolled children under nineteen (19) years of age to minimize gaps in coverage for children who are eligible and to reduce state administrative costs;

(4) Modify eligibility renewal procedures to improve retention and increase the number of children who retain coverage; and

(5)(A) Manage outreach, application, and renewal procedures with the goal of achieving annual improvements in enrollment, enrollment rates, renewals, and renewal rates.

(B) To make the improvements required under subdivision (a)(1) of this section, the department shall maximize the use of existing program databases to obtain information related to earned and unearned income for purposes of eligibility determination and renewals, including without limitation:

(i) The Supplemental Nutrition Assistance Program (SNAP);

(ii) The state child care subsidy program;

(iii) The Arkansas Better Chance Program;

(iv) The National School Lunch Program;

(v) Federal Social Security Administration programs; and

(vi) The Department of Workforce Services database.

(b) To simplify and streamline the renewal process, the Department of Human Services shall:

(1) Maximize the use of data matches, online submissions, and telephone interviews; and

(2) Develop a pre-populated renewal form that will be sent to families to complete and return for use in cases in which the Department of Human Services is unable to renew coverage through the use of data matching, online submissions, or telephone interviews.

History. Acts 2011, No. 771, § 1.

20-77-2003. ARKids First enrollment and renewals.

(a) The Department of Human Services shall perform the initiatives under subsection (b) of this section to increase ARKids First enrollment and renewals and position the state to compete for a performance bonus payment under the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3.

(b) The department shall make best efforts to obtain approval from the Centers for Medicare & Medicaid Services for the following:

(1) For each child enrolled in ARKids First A who becomes ineligible to complete his or her ARKids First A enrollment period for financial reasons, establishing a process to allow ARKids First B coverage from the date of ineligibility through the end date of the ARKids First A enrollment period;

(2) An ex parte renewal process for ARKids First A and ARKids First B, in which the state performs the eligibility redetermination to the maximum extent possible based on information contained in the ARKids First file or by obtaining other information available to the

state through other sources, such as income databases, before it seeks any information from the child's parent or representative; and

(3) An Express Lane Eligibility enrollment option that allows use of other public program databases and findings to reach and enroll children in the ARKids First A and ARKids First B programs.

History. Acts 2011, No. 771, § 1.

SUBCHAPTER 21 — MEDICAID ELIGIBILITY VERIFICATION SYSTEM

SECTION.

20-77-2101. [Repealed.]

20-77-2102. Medicaid Eligibility Verification System — Definitions.

SECTION.

20-77-2103. [Repealed.]

A.C.R.C. Notes. Identical Acts 2017 (1st Ex. Sess.), Nos. 3 and 6, § 1, provided: "Legislative findings and intent.

"(a) The General Assembly finds that:

"(1) The State of Arkansas continues to seek strategies to provide health insurance for low-income and other vulnerable populations in a manner that will encourage personal responsibility and enhance program integrity;

"(2) Arkansas recognizes the continued need to promote employment among beneficiaries of public assistance programs by providing those beneficiaries with the tools to achieve economic advancement;

"(3) Arkansas continues to support the flexibility within § 23-61-1004(h) that authorizes the Governor to 'request a block grant under relevant federal law and regulations for the funding of the Arkansas Medicaid Program as soon as practical if the federal law or regulations change to allow the approval of a block grant for this purpose';

"(4) On March 6, 2017, Governor Asa Hutchinson announced additional reforms to the Arkansas Works Program to further support efficiency and sustainability of the health insurance coverage provided under the Arkansas Works Program by:

"(A) Establishing a work requirement for certain beneficiaries of the Arkansas Works Program to encourage beneficiaries to work and to support beneficiaries in the process of returning to the workforce;

"(B) Capping eligibility for the Arkansas Works Program at one hundred percent (100%) of the federal poverty level; and

"(C) Returning control of the eligibility process to the state by allowing the state the flexibility to determine whether the state would be an 'assessment state' or a 'determination state'; and

"(5)(A) To avoid variations in enrollment within a Medicaid program based on an eligibility determination of a federally facilitated marketplace, Arkansas needs the flexibility to select whether to become an 'assessment state' or a 'determination state' in order to strengthen the integrity of the Medicaid Eligibility Verification System.

"(B) However, the Medicaid Eligibility Verification System established by Acts 2013, No. 1265, requires that the eligibility determination made by the federally facilitated marketplace be accepted by the Department of Human Services, which makes Arkansas a 'determination state' for the purposes of eligibility determination by a federally facilitated marketplace.

"(b) It is the intent of the General Assembly to:

"(1) Implement reforms to the Arkansas Works Program to further support efficiency and sustainability of the health insurance provided under the Arkansas Works Program; and

"(2) Repeal §§ 20-77-2101 and 20-77-2103 to allow Arkansas the flexibility to select whether to become an 'assessment state' or a 'determination state' in order to strengthen the integrity of the Medicaid Eligibility Verification System."

Identical Acts 2017 (1st Ex. Sess.), Nos. 3 and 6, § 2, provided: "Arkansas Works

Program modifications.

“(a) The Department of Human Services shall submit a state plan amendment or waiver, or both, to the Centers for Medicare and Medicaid Services that establishes:

“(1) Income eligibility at an amount equal to or less than one hundred percent (100%) of the federal poverty level, inclusive of the income disregard under 42 C.F.R. § 435.603(d)(4), as it existed on January 1, 2017; and

“(2) A work requirement for eligible individuals with exemptions for certain activities and conditions.

“(b) The income eligibility standard and the work requirement under subsection (a) of this section shall be effective on and after:

“(1) January 1, 2018; or

“(2) The date of occurrence of the later of the following if one (1) or both actions have not occurred by January 1, 2018:

“(A) Approval of the state plan amendment or waiver, or both, under subsection (a) of this section from the Centers for Medicare and Medicaid Services; and

“(B) The approval and adoption of rules under § 10-3-309 and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., that are necessary to implement the income eligibility standards and work requirements under this section.”

Effective Dates. Identical Acts 2017 (1st Ex. Sess.), Nos. 3 and 6, § 11: May 4, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act requires that the Department of Human Services submit a state plan amendment or waiver, or both, to the Centers for Medicare and Medicaid Services; that the state plan amendment or waiver, or both, impacts certain individuals who are presently enrolled in the Arkansas Works Program; and that this act is immediately necessary because the Department of Human Services needs to be able to make the state plan amendment request or waiver request, or both, at the earliest possible date to ensure certainty in the requirements of the Arkansas Works Program. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

20-77-2101. [Repealed.]

Publisher’s Notes. This section, concerning definitions, was repealed by identical Acts 2017 (1st Ex. Sess.), Nos. 3 and

6, § 7. The section was derived from Acts 2013, No. 1265, § 1; 2015, No. 1157, § 8.

20-77-2102. Medicaid Eligibility Verification System — Definitions.

(a) The Department of Human Services shall establish and maintain the Medicaid Eligibility Verification System that is designed to prevent fraud in the establishment and maintenance of Medicaid eligibility.

(b)(1) In establishing the Medicaid Eligibility Verification System, the department shall have the flexibility to determine whether the state shall be an “assessment state” or a “determination state” for purposes of Medicaid eligibility determinations by the federally facilitated marketplace.

(2) As used in this subsection:

(A) “Assessment state” means a state with a federally facilitated marketplace that can elect to have the federally facilitated market-

place make assessments of Medicaid eligibility and then transfer the account of an individual to the state Medicaid agency for a final determination; and

(B) "Determination state" means a state that requires the eligibility determination made by the federally facilitated marketplace to be accepted by the state Medicaid agency.

History. Acts 2013, No. 1265, § 1; 2017 (1st Ex. Sess.), No. 3, § 8; 2017 (1st Ex. Sess.), No. 6, § 8. amendment by identical acts Nos. 3 and 6 added "Definitions" to the section heading; and added (b).

Amendments. The 2017 (1st Ex. Sess.)

20-77-2103. [Repealed.]

Publisher's Notes. This section, concerning the Medicaid eligibility verification system, was repealed by identical Acts 2017 (1st Ex. Sess.), Nos. 3 and 6, § 9. The section was derived from Acts 2013, No. 1265, § 1.

SUBCHAPTER 22 — HEALTHCARE QUALITY AND PAYMENT POLICY ADVISORY COMMITTEE

SECTION.	SECTION.
20-77-2201. Title.	development of episodes of care.
20-77-2202. Definitions.	
20-77-2203. Healthcare Quality and Payment Policy Advisory Committee — Created — Membership.	20-77-2206. Powers and duties of Healthcare Quality and Payment Policy Advisory Committee.
20-77-2204. Purpose.	20-77-2207. Confidentiality.
20-77-2205. Medicaid payment and reimbursement rules related to	

20-77-2201. Title.

This subchapter shall be known and may be cited as the "Healthcare Quality and Payment Policy Advisory Committee Act".

History. Acts 2013, No. 1266, § 1.

20-77-2202. Definitions.

As used in this subchapter:

(1) "Data, records, reports, and documents" means a recording of an interview and an oral or written proceeding, report, statement, minute, memorandum, data, and other documentation collected or compiled to establish or modify episodes of care, quality measures, or target prices; and

(2) "Healthcare provider" means one (1) of the following individuals or entities licensed by the State of Arkansas to provide healthcare services:

- (A) An advanced practice nurse;
- (B) An athletic trainer;
- (C) An audiologist;

- (D) A certified orthotist;
- (E) A chiropractor;
- (F) A community mental health center or clinic;
- (G) A dentist;
- (H) A home healthcare provider;
- (I) A hospice care provider;
- (J) A hospital-based service;
- (K) A hospital;
- (L) A licensed ambulatory surgery center;
- (M) A licensed certified social worker;
- (N) A licensed dietician;
- (O) A licensed durable medical equipment provider;
- (P) A licensed professional counselor;
- (Q) A licensed psychological examiner;
- (R) A long-term care facility;
- (S) An occupational therapist;
- (T) An optometrist;
- (U) A pharmacist;
- (V) A physical therapist;
- (W) A physician or surgeon;
- (X) A podiatrist;
- (Y) A prosthetist;
- (Z) A psychologist;
- (AA) A respiratory therapist;
- (BB) A rural health clinic;
- (CC) A speech pathologist;
- (DD) Another healthcare practitioner as determined by the Department of Human Services in rules adopted under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and
- (EE) Another person or entity enrolled to provide health or medical care services or goods authorized under the medical assistance programs provided in this state under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.

History. Acts 2013, No. 1266, § 1.

20-77-2203. Healthcare Quality and Payment Policy Advisory Committee — Created — Membership.

(a) The Healthcare Quality and Payment Policy Advisory Committee is created.

(b)(1) Except as provided under subdivision (b)(2) of this section, the committee shall consist of the following seven (7) voting members:

(A) Three (3) members appointed by the President Pro Tempore of the Senate, including:

(i) One (1) physician in good standing with the Arkansas State Medical Board;

(ii) One (1) member nominated by the Arkansas Hospital Association, Inc. who represents hospitals with more than one hundred (100) beds; and

(iii) One (1) medical director of a commercially owned insurance company participating with the Division of Medical Services of the Department of Human Services in the Arkansas Health Care Payment Improvement Initiative;

(B) Three (3) members appointed by the Speaker of the House of Representatives, including:

(i) Two (2) physicians nominated by the Arkansas Medical Society, Inc.; and

(ii) One (1) member nominated by the Arkansas Hospital Association, Inc. who represents hospitals with fewer than one hundred (100) beds; and

(C) The Director of the Division of Medical Services of the Department of Human Services.

(2)(A) For purposes of reviewing a draft rule related to long-term care services and supports, the committee shall include the following five (5) additional voting members:

(i) One (1) member nominated by the Arkansas Health Care Association to represent nursing homes and appointed by the President Pro Tempore of the Senate;

(ii) One (1) member nominated by the Arkansas Association of Area Agencies on Aging and appointed by the President Pro Tempore of the Senate;

(iii) One (1) member nominated by the Arkansas Residential Assisted Living Association, Inc. and appointed by the President Pro Tempore of the Senate;

(iv) One (1) member nominated by the Arkansas Residential Assisted Living Association, Inc. and appointed by the Speaker of the House of Representatives; and

(v) One (1) member nominated by the HomeCare Association of Arkansas and appointed by the Speaker of the House of Representatives.

(B)(i) As used in subdivision (b)(2)(A) of this section, "long-term care services and supports" does not include services provided in intermediate care facilities for individuals with developmental disabilities or services provided by an entity licensed or certified by the Division of Developmental Disabilities Services of the Department of Human Services.

(ii) For purposes of reviewing a draft rule related to services provided in intermediate care facilities for individuals with developmental disabilities and services provided by an entity licensed or certified by the Division of Developmental Disabilities Services, § 20-77-2205(b)(2) applies.

(3) A medical director of a commercially owned insurance company participating with the Division of Medical Services in the Arkansas Healthcare Payment Improvement Initiative who is not appointed

under subdivision (b)(1)(A)(iii) of this section may serve as an ex officio member of the committee but shall not vote.

(c) The committee may appoint subcommittees of the committee to study, research, and advise the committee.

(d) The Department of Human Services may provide offices and staff for the committee.

(e)(1) The members of the committee shall serve two-year terms.

(2) At the first meeting of the committee, the length of the terms of the initial appointees shall be determined by lot.

(f) The members of the committee shall hold the first meeting in offices made available by the department within thirty (30) days of the appointment of the members of the committee.

(g) The committee annually shall select from its membership a chair and a vice chair.

(h)(1) A majority of the membership of the committee constitutes a quorum.

(2) A majority vote of the members present is required for any action of the committee.

(i)(1) A vacancy on the committee due to death, resignation, removal, or another cause shall be filled in the same manner as the initial appointment.

(2) A member appointed to fill a vacancy shall serve for the remainder of the vacated term.

(j) The members of the committee may be removed by the appointing official for cause.

(k) Members of the committee except those employed by the state may receive expense reimbursement and stipends under § 25-16-901 et seq.

History. Acts 2013, No. 1266, § 1.

20-77-2204. Purpose.

The purpose of the Healthcare Quality and Payment Policy Advisory Committee is to make recommendations and provide advice and assistance to the Department of Human Services concerning the promulgation of rules submitted by the department to the committee to promote high-quality, safe, effective, timely, efficient, and patient-centered physician services, hospital services, and long-term care services and supports in the State of Arkansas, as related to the development of episodes of care and the episodes-of-care target prices and quality metrics within the Arkansas Healthcare Payment Improvement Initiative.

History. Acts 2013, No. 1266, § 1.

20-77-2205. Medicaid payment and reimbursement rules related to development of episodes of care.

(a)(1) The Department of Human Services shall not adopt a rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., related to the development of episodes of care for patient-centered physician services, hospital services, and long-term care services and supports, including without limitation the episodes-of-care target prices and quality metrics, without first submitting the proposed rule to the Healthcare Quality and Payment Policy Advisory Committee for review.

(2) Concurrent with a submission of a draft rule to the committee under subdivision (a)(1) of this section, the department shall issue a public notice of the draft rule for which the department shall:

(A) Include in the notice a statement of the terms or substance of the draft rule and the specific provider category or categories affected;

(B) Mail the notice to any person who requests notice of a submission of a draft rule to the committee under subdivision (a)(1) of this section; and

(C) Post the notice on the department's website in a section dedicated to the committee.

(3) Concurrent with a submission of a draft rule to the committee under subdivision (a)(1) of this section, the department shall post the draft rule on its website in a section dedicated to the committee during the entire period the draft rule is under consideration by the committee.

(4) The department shall provide to a person who requests the information a meeting notice that identifies the time and place of each committee and subcommittee meeting and the draft rules under consideration by the committee or subcommittee at each meeting.

(b)(1) At least forty-five (45) days before initiating the promulgation process under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., for a rule related to the development of episodes of care for patient-centered physician services, hospital services, or long-term care services and supports, including without limitation the episodes-of-care target prices and quality metrics, the department shall submit the draft rule to the committee for review and advice.

(2)(A) If the draft rule pertains to a healthcare provider listed in § 20-77-2202(2) whose provider category is not represented on the committee, the committee shall seek representation by designated representatives of the statewide provider association or associations for that provider category for the purpose of review and advice.

(B) The committee shall:

(i) Provide at least twenty-five (25) days for the representatives of the affected healthcare providers to review and comment on the draft rule; and

(ii) Afford the representatives the opportunity to participate in committee and subcommittee deliberations on the draft rule.

(C)(i) The committee shall not provide advice to the department without seeking the input of the affected healthcare providers.

(ii) If the committee does not reach agreement with a provider association on a draft rule pertaining to a healthcare provider not represented on the committee, the committee shall prepare a written report that objectively states the information and viewpoints presented but does not advise the department concerning how to proceed on the draft rule.

(c) A rule required to be submitted to the committee under subsection (b) of this section that is adopted without following this section is void.

(d)(1) The committee shall issue and deliver a written advisory statement to the department within thirty (30) calendar days after the department's submission of the proposed rule to the committee.

(2) If the department fails to follow the advice of the committee with respect to a proposed rule under this section, the department, before beginning the promulgation process, shall prepare a written report setting out the advice of the committee and an explanation of the reason that the department decided not to follow the committee's advice with regard to the rule.

(3) The department shall make available for public review the report required under subdivision (d)(2) of this section and the text of the proposed rule during the public comment period.

(4) The department may begin the promulgation process for the proposed rule if the committee does not issue and deliver a written advisory statement to the department within thirty (30) calendar days after the department's submission of the proposed rule to the committee.

(e) After the public comment period, the department shall retain and make available for public review the report required under subdivision (d)(2) of this section and the text of any final regulation issued.

History. Acts 2013, No. 1266, § 1.

20-77-2206. Powers and duties of Healthcare Quality and Payment Policy Advisory Committee.

The Healthcare Quality and Payment Policy Advisory Committee shall:

(1) Review and provide advice regarding draft rules submitted by the Department of Human Services under § 20-77-2205;

(2) Have the authority to obtain from the department all data and analysis required to fully meet its charge under § 20-77-2204; and

(3) Provide reports to the Legislative Council upon request.

History. Acts 2013, No. 1266, § 1.

20-77-2207. Confidentiality.

(a) To the extent that the data, records, reports, and documents identify or could be used to identify an individual patient, a healthcare provider, an institution, or a health plan, the data, records, reports, and documents collected or compiled by or on behalf of the Healthcare Quality and Payment Policy Advisory Committee are confidential and are not subject to disclosure under state and federal law.

(b) Data, records, reports, and documents collected or compiled by or on behalf of the committee are not admissible in a legal proceeding and are exempt from discovery and disclosure to the same extent that records of and testimony before committees that evaluate the quality of medical or hospital care are exempt under § 16-46-105(a)(1).

(c) A healthcare provider's use of the information in its internal operations does not operate as a waiver of the confidentiality protections under this section.

(d) The committee shall treat data, records, reports, and documents in a manner consistent with state and federal privacy requirements, including without limitation the privacy requirements under the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. § 164.512(i).

History. Acts 2013, No. 1266, § 1.

SUBCHAPTER 23 — HOME CAREGIVER TRAINING**SECTION.**

20-77-2301. Findings — Intent.

20-77-2302. Definitions.

20-77-2303. Training requirement.

SECTION.

20-77-2304. Exemptions.

20-77-2305. Rules.

Effective Dates. Acts 2013, No. 1410,
§ 2: Apr. 1, 2014.

20-77-2301. Findings — Intent.

(a) The General Assembly finds that:

(1) Although a direct-care worker in the State of Arkansas who serves a Medicaid-reimbursable client must undergo a forty-hour training program, a direct-care worker who serves a client in his or her home and who is not Medicaid-reimbursable has no training requirement; and

(2) Beginning January 1, 2012, and continuing until January 1, 2027, approximately ten thousand (10,000) persons a day turn sixty-five (65) years of age in the United States.

(b) This subchapter is intended to:

(1) Assure disabled citizens and the constantly expanding population of senior citizens in Arkansas that a direct-care worker is properly trained in core competencies; and

(2) Acknowledge the necessity of proper training for all direct-care workers that, in turn, will contribute to a reduction in per capita healthcare costs for Arkansans.

History. Acts 2013, No. 1410, § 1.

20-77-2302. Definitions.

As used in this subchapter:

(1) “Caregiver services” means services provided to an individual in the State of Arkansas to assist the recipient of the services in the activities of daily living, and the recipient of services is fifty (50) years of age or older at the time the services are provided;

(2) “Compensation” means money or another type of property of value received by a provider of caregiver services in exchange for the services of the provider without regard to the source of payment of the money or other type of property;

(3) “Successful completion” means completion of training in acceptable core competencies in the physical skills under § 20-77-2303; and

(4) “Trained in-home assistant” means an individual who has met the requirements of this subchapter and provides caregiver services.

History. Acts 2013, No. 1410, § 1.

20-77-2303. Training requirement.

(a) A person who applies for employment to provide caregiver services in this state for compensation shall provide documentation to an in-home services agency of successful completion of training as a trained in-home assistant under this subchapter.

(b) A person qualifies as a trained in-home assistant under this subchapter if the person:

(1) Is eighteen (18) years of age or older;

(2) Has not been convicted of a felony that would prevent the person from working in a long-term care facility under § 20-38-101 et seq. unless the conviction has been expunged or pardoned; and

(3) Except as provided under subsection (e) of this section, has successfully completed a caregiver training course addressing the following core competencies approved by the Department of Health, including not less than forty (40) hours of training in:

(A) Body functions;

(B) Body mechanics and safety precautions;

(C) Communication skills;

(D) Dementia and Alzheimer’s disease;

(E) Emergency situations, including recognition of conditions and proper procedures;

(F) Household safety and fire prevention;

(G) Infection control and prevention, including maintaining a safe and clean working environment;

(H) Ethical considerations and state law regarding delegation of nursing tasks to unlicensed personnel;

(I) Nutrition;

(J) At least sixteen (16) hours of the forty (40) required hours covering physical skills and competent demonstration of such skills for:

(i) Ambulation;

(ii) Basic housekeeping procedures, including laundry skills;

(iii) Bathing, shampooing, and shaving;

(iv) Dressing and undressing;

(v) Meal preparation and clean up;

(vi) Oral hygiene;

(vii) Range of motion;

(viii) Toileting; and

(ix) Transfer techniques;

(K) Record keeping and documentation of activities;

(L) Role of caregiver in a healthcare team; and

(M) Nail and skin care.

(c) The department may expand or reduce the topics acceptable for the caregiver course, but the number of hours of training shall not be modified.

(d) The training required under this subchapter may be certified by an employer if that employer maintains records regarding:

(1) The identification of the employee who received training;

(2) The topic for which the training was conducted; and

(3) The amount of time spent on training.

(e)(1) A person is exempt from the provisions of subdivision (b)(3) of this section if the person has at least one (1) year of experience working in an institutional setting, including without limitation a:

(A) Home health agency;

(B) Hospital;

(C) Hospice; or

(D) Long-term care facility.

(2) The experience required under subdivision (e)(1) of this section shall be verified by the person's employer during the experience.

History. Acts 2013, No. 1410, § 1.

Criminal Record Sealing Act of 2013,

Cross References. Comprehensive § 16-90-1401 et seq.

20-77-2304. Exemptions.

An individual may provide caregiver services without the training required under this subchapter if the person is a:

(1) Certified Nursing Assistant;

(2) Licensed practical nurse;

(3) Parent, grandparent, child, grandchild, or sibling of the recipient of the services;

- (4) Physician;
- (5) Registered nurse;
- (6) Service provider who does not receive compensation for his or her services;
- (7) Licensed social worker;
- (8) Court-appointed legal guardian of the recipient of the caregiver services;
- (9) A direct-care worker providing caregiver services to a participant in any program licensed, certified, or administered by the Department of Human Services.

History. Acts 2013, No. 1410, § 1.

20-77-2305. Rules.

The Department of Health shall adopt rules to implement this subchapter.

History. Acts 2013, No. 1410, § 1.

SUBCHAPTER 24 — HEALTH CARE INDEPENDENCE ACT OF 2013

SECTION.
20-77-2401 — 20-77-2408. [Expired.]

20-77-2401 — 20-77-2408. [Expired.]

Publisher’s Notes. This subchapter, concerning the Health Care Independence Act of 2013, expired December 31, 2016, pursuant to identical Acts 2016 (2nd Ex. Sess.), Nos. 1 and 2, § 2. The subchapter was derived from the following sources:

20-77-2401. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2402. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2403. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2404. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2405. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2406. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2407. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1.

20-77-2408. Acts 2013, No. 1496, § 21; 2013, No. 1497, § 1; 2013, No. 1498, § 1; 2016 (2nd Ex. Sess.), No. 1, § 2; 2016 (2nd Ex. Sess.), No. 2, § 2.

SUBCHAPTER 25 — OFFICE OF MEDICAID INSPECTOR GENERAL

SECTION.	SECTION.
20-77-2501. Purpose.	General — Powers and duties.
20-77-2502. Definitions.	
20-77-2503. Office of Medicaid Inspector General — Created.	20-77-2506. Medicaid Inspector General — Duties.
20-77-2504. Medicaid Inspector General — Appointment — Qualifications.	20-77-2507. Cooperation of agency officials and employees.
20-77-2505. Office of Medicaid Inspector	20-77-2508. Transfer of duties and resources.

SECTION.

- 20-77-2509. Reports required of Medicaid Inspector General — Definition.
- 20-77-2510. Department of Human Services consultation with Office of Medicaid Inspector General.

SECTION.

- 20-77-2511. Provider compliance program.
- 20-77-2512. Applicability of Medicaid Fairness Act.
- 20-77-2513. Enterprise Fraud Program.

Effective Dates. Acts 2013, No. 1499, § 5: July 1, 2013. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the oversight and audit of the state’s Medicaid program is essential to its continued operation; that the creation of the Office of the Medicaid Inspector General will ensure that fraud, waste, and abuse are found in a timely manner; and that this act is necessary to ensure that state and federal monies are not misspent. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July, 1, 2013.”

Acts 2014, No. 259, § 8: July 1, 2014. Emergency clause provided: “It is found

and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2014 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2014 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2014.”

20-77-2501. Purpose.

The purpose of this subchapter is to:

- (1) Consolidate staff and other Medicaid fraud detection, prevention, and recovery functions from the relevant governmental entities into a single office;
- (2) Create a more efficient and accountable structure;
- (3) Reorganize and streamline the state’s process for detecting and combating Medicaid fraud and abuse; and
- (4) Maximize the recovery of improper Medicaid payments.

History. Acts 2013, No. 1499, § 2.

20-77-2502. Definitions.

As used in this subchapter:

- (1)(A) “Abuse” means provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Medicaid program or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care.

(B) “Abuse” includes recipient practices that result in an unnecessary cost to the Medicaid program;

(2)(A) “Fraud” means a purposeful deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to the person or another person.

(B) “Fraud” includes any act that constitutes fraud under applicable federal or state law;

(3) “Healthcare plan” means a publicly or privately funded program or organization that is formed to provide or pay for healthcare goods or services, including without limitation:

(A) Health insurance plans;

(B) Managed care organization plans;

(C) Risk-based provider plans;

(D) The Arkansas Medicaid Program;

(E) The Social Security Disability Insurance program; and

(F) The Medicare program;

(4) “Investigation” means investigations of fraud, abuse, or illegal acts perpetrated within the medical assistance program by providers or recipients of medical assistance care, services, and supplies;

(5) “Person” means an individual or entity other than a recipient of a healthcare item or service;

(6) “Recovery” means any action or attempt by the Medicaid Inspector General to recoup or collect Medicaid payments already made to a provider with respect to a claim by:

(A) Reducing other payments currently owed to the provider;

(B) Withholding or setting off the amount against current or future payments to the provider;

(C) Demanding payment back from a provider for a claim already paid; or

(D) Reducing or affecting in any other manner the future claim payments to the provider; and

(7) “Waste” means that taxpayers are not receiving reasonable value for money in connection with a government-funded activity due to an inappropriate act or omission involving mismanagement, inappropriate actions, and inadequate oversight by the person with control over or access to government resources.

History. Acts 2013, No. 1499, § 2; 2017, No. 978, §§ 13, 14.

Amendments. The 2017 amendment rewrote (3); and repealed (7).

20-77-2503. Office of Medicaid Inspector General — Created.

The Office of Medicaid Inspector General is created within the office of the Governor and is independent from the Department of Human Services.

History. Acts 2013, No. 1499, § 2.

20-77-2504. Medicaid Inspector General — Appointment — Qualifications.

(a)(1) The Medicaid Inspector General shall be appointed by the Governor, with the advice and consent of the Senate.

(2) The inspector shall serve at the pleasure of the Governor.

(b) The inspector shall report directly to the Governor.

(c) The inspector shall be the Director of the Office of Medicaid Inspector General.

(d) The inspector shall have not less than ten (10) years of professional experience in one (1) or more of the following areas of expertise:

(1) Prosecution for fraud;

(2) Fraud investigation;

(3) Auditing; or

(4) Comparable alternate experience in health care, if the healthcare experience involves some consideration of fraud.

History. Acts 2013, No. 1499, § 2.

20-77-2505. Office of Medicaid Inspector General — Powers and duties.

The Office of Medicaid Inspector General shall:

(1) Prevent, detect, and investigate fraud and abuse within the medical assistance program;

(2) Refer appropriate cases for criminal prosecution;

(3) Recover improperly expended medical assistance funds;

(4) Audit medical assistance program functions; and

(5) Establish a medical assistance fraud and abuse prevention program.

History. Acts 2013, No. 1499, § 2.

20-77-2506. Medicaid Inspector General — Duties.

The Medicaid Inspector General shall:

(1) Hire deputies, directors, assistants, and other officers and employees needed for the performance of his or her duties and prescribe the duties of deputies, directors, assistants, and other officers and fix the compensation of deputies, directors, assistants, and other officers within the amounts appropriated;

(2)(A) Conduct and supervise activities to prevent, detect, and investigate medical assistance program fraud and abuse.

(B)(i) The Office of Medicaid Inspector General shall review provider records only for the three (3) years before an investigation begins.

(ii) However, if a credible allegation of fraud has been made or if the Office of Medicaid Inspector General has reason to believe that fraud has occurred, the Office of Medicaid Inspector General may

review provider records for the five (5) years before the investigation began;

(3) Work in a coordinated and cooperative manner with:

(A) Federal, state, and local law enforcement agencies;

(B) The Medicaid Fraud Control Unit of the office of the Attorney General;

(C) United States Attorneys;

(D) United States Department of Health and Human Services' Office of Inspector General;

(E) The Federal Bureau of Investigation;

(F) The United States Drug Enforcement Administration;

(G) Prosecuting attorneys;

(H) The Centers for Medicare & Medicaid Services; and

(I) An investigative unit maintained by a health insurer;

(4) Solicit, receive, and investigate complaints related to fraud and abuse within the medical assistance program;

(5)(A) Inform the Governor, the Attorney General, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives regarding efforts to prevent, detect, investigate, and prosecute fraud and abuse within the medical assistance program.

(B) All cases in which fraud is determined to have occurred shall be referred to the appropriate law enforcement agency for prosecution;

(6)(A) Pursue civil and administrative enforcement actions against an individual or entity that engages in fraud, abuse, or illegal or improper acts within the medical assistance program, including without limitation:

(i) Referral of information and evidence to regulatory agencies and licensure boards;

(ii) Withholding payment of medical assistance funds in accordance with state laws and rules and federal laws and regulations;

(iii) Imposition of administrative sanctions and penalties in accordance with state laws and rules and federal laws and regulations;

(iv) Exclusion of providers, vendors, and contractors from participation in the medical assistance program;

(v) Initiating and maintaining actions for civil recovery and, where authorized by law, seizure of property or other assets connected with improper payments;

(vi) Entering into civil settlements; and

(vii) Recovery of improperly expended medical assistance program funds from those who engage in fraud or abuse or illegal or improper acts perpetrated within the medical assistance program.

(B) In investigating civil and administrative enforcement actions under subdivision (6)(A) of this section, the Medicaid Inspector General shall consider the quality and availability of medical care and services and the best interest of both the medical assistance program and recipients;

(7) Make available to appropriate law enforcement officials information and evidence relating to suspected criminal acts that have been obtained in the course of the Medicaid Inspector General's duties;

(8)(A) Refer suspected fraud or criminal activity to the Medicaid Fraud Control Unit.

(B) After a referral and with ten (10) days' written notice to the Medicaid Fraud Control Unit, the Medicaid Inspector General may provide relevant information about suspected fraud or criminal activity to another federal or state law enforcement agency that the Medicaid Inspector General deems appropriate under the circumstances;

(9) Subpoena and enforce the attendance of witnesses, administer oaths or affirmations, examine witnesses under oath, and take testimony in connection with an investigation or audit under this subchapter and under rules governing these investigations;

(10) Require and compel the production of books, papers, records, and documents as he or she deems relevant or material to an investigation, examination, or review undertaken under this section;

(11)(A) Examine and copy or remove documents or records related to the medical assistance program or necessary for the Medicaid Inspector General to perform his or her duties if the documents are prepared, maintained, or held by or available to a state agency or local governmental entity the patients or clients of which are served by the medical assistance program, or the entity is otherwise responsible for the control of fraud and abuse within the medical assistance program.

(B) A document or record examined and copied or removed by the Medicaid Inspector General under subdivision (11)(A) of this section is confidential.

(C) The removal of a record under subdivision (11)(A) of this section is limited to circumstances in which a copy of the record is insufficient for an appropriate legal or investigative purpose.

(D) For a removal under subdivision (11)(A) of this section, the Medicaid Inspector General shall copy the record and ensure the expedited return of the original, or of a copy if the original is required for an appropriate legal or investigative purpose, so that the information is expedited and the original or copy is readily accessible for the care and treatment needs of the patient;

(12)(A) Recommend and implement policies relating to the prevention and detection of fraud and abuse.

(B) The Medicaid Inspector General shall obtain the consent of the Attorney General before the implementation of a policy under subdivision (12)(A) of this section that may affect the operations of the office of the Attorney General;

(13)(A) Monitor the implementation of a recommendation made by the Office of Medicaid Inspector General to an agency or other entity with responsibility for administration of the medical assistance program and produce a report detailing the results of its monitoring activity as necessary.

(B) The report shall be submitted to the:

- (i) Governor;
- (ii) President Pro Tempore of the Senate;
- (iii) Speaker of the House of Representatives;
- (iv) Legislative Council;
- (v) Arkansas Legislative Audit; and
- (vi) Attorney General;

(14) Prepare cases, provide testimony, and support administrative hearings and other legal proceedings;

(15) Review and audit contracts, cost reports, claims, bills, and other expenditures of medical assistance program funds to determine compliance with applicable state laws and rules and federal laws and regulations and take actions authorized by state laws and rules and federal laws and regulations;

(16)(A) Work with the fiscal agent employed to operate the Medicaid Management Information System of the Department of Human Services to optimize the system, including without limitation the ability to add edits and audits in consultation with the Department of Human Services.

(B) The Medicaid Inspector General shall be consulted before an edit or audit is added or discontinued by the Department of Human Services;

(17) Work in a coordinated and cooperative manner with relevant agencies in the implementation of information technology relating to the prevention and identification of fraud and abuse in the medical assistance program;

(18)(A) Conduct educational programs for medical assistance program providers, vendors, contractors, and recipients designed to limit fraud and abuse within the medical assistance program.

(B) The Office of Medicaid Inspector General shall regularly communicate with and educate providers about the Office of Medicaid Inspector General's fraud and abuse prevention program and its audit policies and procedures.

(C) The Office of Medicaid Inspector General shall educate providers annually concerning its areas of focus within the medical assistance program, appropriate billing and documentation, and methods for improving compliance with program rules, policies, and procedures;

(19)(A) Develop protocols to facilitate the efficient self-disclosure consistent with the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, and the collection of overpayments and monitor collections, including those that are self-disclosed by providers.

(B) A provider's good faith self-disclosure of overpayments may be considered as a mitigating factor in the determination of an administrative enforcement action;

(20) Receive and investigate complaints of alleged failures of state and local officials to prevent, detect, and prosecute fraud and abuse in the medical assistance program;

(21) Implement rules relating to the prevention, detection, investigation, and referral of fraud and abuse within the medical assistance program and to the recovery of improperly expended medical assistance program funds;

(22) Conduct, in the context of the investigation of fraud and abuse, on-site inspections of a facility or an office;

(23)(A) Take appropriate authorized actions to ensure that the medical assistance program is the payor of last resort; and

(B) Recommend to the Department of Human Services that it take appropriate actions authorized under the jurisdiction of the Department of Human Services to ensure that the medical assistance program is the payor of last resort;

(24) Annually submit a budget request for the next state fiscal year to the Governor;

(25) Identify and order the return of underpayments to providers;

(26) Maintain the confidentiality of all information and documents that are deemed confidential by law;

(27) Implement, facilitate, and maintain federally required directives and contracts required for Medicaid integrity programs;

(28) Implement and maintain a hotline for reporting complaints regarding fraud, waste, and abuse by providers;

(29) Audit, investigate, and access Medicaid encounter data, premium data, or other information from an entity contracted with for the purpose of serving Medicaid programs;

(30)(A) Promulgate administrative rules to establish policies and procedures for audits and investigations that are consistent with the duties of the Office of Medicaid Inspector General under this chapter.

(B) The rules shall be posted on the Office of Medicaid Inspector General's website;

(31) Identify conflicts between the Medicaid state plan, Department of Human Services rules, Medicaid provider manuals, Medicaid notices, or other guidance and recommend that the Department of Human Services reconcile inconsistencies;

(32) When conducting an audit, investigation, or review under this subchapter, classify violations as either:

(A) Errors that do not rise to the level of fraud or abuse; or

(B) Fraud or abuse;

(33)(A) If a credible allegation of fraud has been made, review provider records that have been the subject of a previous audit or review for the purpose of fraud investigation and referral.

(B) However, the Medicaid Inspector General shall not duplicate an audit of a contract, cost report, claim, bill, or expenditure of a medical assistance program fund that has been the subject of a previous audit or review by or on behalf of the Office of Medicaid Inspector General, the Medicaid Fraud Control Unit, or other federal agency with authority over the medical assistance program if the audit or review was performed in accordance with the Government Auditing Standards;

(34)(A) Utilize a quality improvement organization as part of the assessment of quality of services.

(B) The quality improvement organization shall refer all identified improper payments due to technical deficiencies, abuse, waste, or fraud to the Medicaid Inspector General for further investigation and appropriate action, including without limitation recovery; and

(35) Perform other functions necessary or appropriate to fulfill the duties and responsibilities of the Office of Medicaid Inspector General.

History. Acts 2013, No. 1499, § 2.

20-77-2507. Cooperation of agency officials and employees.

(a)(1) The Medicaid Inspector General shall request information, assistance, and cooperation from a federal, state, or local governmental department, board, bureau, commission, or other agency or unit of an agency to carry out the duties under this section.

(2) A state or local agency or unit of an agency shall provide information, assistance, and cooperation under this section.

(b) Upon request of a prosecuting attorney, the following entities shall provide information and assistance as the entity deems necessary, appropriate, and available to aid the prosecuting attorney in the investigation of fraud and abuse within the medical assistance program and the recovery of improperly expended funds:

(1) The Office of Medicaid Inspector General;

(2) The Department of Human Services;

(3) The Medicaid Fraud Control Unit of the office of the Attorney General; and

(4) Another state or local government entity.

(c) All tips to the Arkansas Medicaid Fraud and Abuse Hotline under § 20-77-2506(28) that include an allegation of fraud shall be forwarded to the Office of Medicaid Inspector General.

History. Acts 2013, No. 1499, § 2.

20-77-2508. Transfer of duties and resources.

(a) The duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Department of Human Services necessary to the operations of the Office of Medicaid Inspector General under § 20-77-2505 are transferred to the office.

(b) The office shall assume the duties under the Medical Assistance Programs Integrity Law, § 20-77-1301 et seq.

History. Acts 2013, No. 1499, § 2.

20-77-2509. Reports required of Medicaid Inspector General — Definition.

(a) The Medicaid Inspector General shall, no later than October 1 of each year, submit to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, Arkansas Legislative Audit, the Legislative Council, and the Attorney General a report summarizing the activities of the Office of Medicaid Inspector General during the preceding calendar year.

(b) The report required under subsection (a) of this section shall include without limitation:

(1) The number, subject, and other relevant characteristics of:

(A) Investigations initiated and completed, including without limitation outcome, region, source of complaint, and whether or not the investigation was conducted jointly with the Attorney General;

(B) Audits initiated and completed, including without limitation outcome, region, the reason for the audit, the total state and federal dollar value identified for recovery, the actual state and federal recovery from the audits, and the amount repaid to the Centers for Medicare & Medicaid Services;

(C) Administrative actions initiated and completed, including without limitation outcome, region, and type;

(D)(i) Referrals for prosecution to the Attorney General and to federal or state law enforcement agencies and referrals to licensing authorities.

(ii) Information reported under subdivision (b)(1)(D)(i) of this section shall include without limitation the status and region of an administrative action;

(E) Civil actions initiated by the office related to improper payments, the resulting civil settlements entered, overpayments identified, and the total dollar value identified and collected; and

(F) Administrative and education activities conducted to improve compliance with Medicaid program policies and requirements; and

(2)(A) A narrative that evaluates the office's performance, describes specific problems with the procedures and agreements required under this section, discusses other matters that may have impaired the office's effectiveness, and summarizes the total savings to the state medical assistance program.

(B)(i) In addition to total savings, the narrative shall detail net savings in state funds.

(ii) As used in subdivision (b)(2)(B)(i) of this section, "net savings" means amounts recovered by the office less payments made to the Centers for Medicare & Medicaid Services and the costs of state administrative procedures.

(c) The office may subpoena individuals, books, electronic and other records, and documents that are necessary for the completion of reports under this section.

(d)(1) In making the report required under subsection (a) of this section, the inspector shall not disclose information that jeopardizes an ongoing investigation or proceeding.

(2) The inspector may disclose information in the report required under subsection (a) of this section if the information does not jeopardize an ongoing investigation or proceeding and the inspector fully apprises the designated recipients of the scope and quality of the office's activities.

(e) Quarterly by April 1, July 1, October 1, and January 1 of each year, the inspector shall submit to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, Arkansas Legislative Audit, the Legislative Council, and the Attorney General an accountability statement providing a statistical profile of the referrals made to the Medicaid Fraud Control Unit of the office of the Attorney General, audits, investigations, and recoveries.

History. Acts 2013, No. 1499, § 2.

20-77-2510. Department of Human Services consultation with Office of Medicaid Inspector General.

(a) The Department of Human Services shall consult with the Office of Medicaid Inspector General regarding an activity undertaken by a fiscal intermediary or fiscal agent pertaining to suspected fraud, waste, or abuse.

(b) The department, in consultation with the office, shall:

(1) Develop, test, recommend, and implement methods to strengthen the capability of the Medicaid Management Information System to detect and control fraud, waste, and abuse and improve expenditure accountability;

(2)(A) Enter into agreement with a fiscal agent in collaboration with the office's data mining technology to develop, test, and implement the new methods under subdivision (b)(1) of this section.

(B) A collaborative agreement with the office under subdivision (b)(2)(A) of this section shall be made with an agent that has demonstrated expertise in the areas addressed by the agreement;

(3)(A) Develop, test, recommend, and implement an automated process to improve the coordination of benefits between the medical assistance program and other sources of coverage for medical assistance recipients.

(B)(i) An automated process under subdivision (b)(3)(A) of this section initially shall examine the savings potential to the medical assistance program through retrospective review of claims paid.

(ii) The examination under subdivision (b)(3)(B)(i) of this section shall be completed no later than January 1, 2014.

(iii) If, based upon the initial experience under subdivision (b)(3)(B)(i) of this section, the Medicaid Inspector General deems the automated process to be capable of including or moving to a prospective review with negligible effect on the turnaround of claims for

provider payment or on recipient access to services, the inspector in subsequent tests shall examine the savings potential through prospective, pre-claims payment review;

(4) Take all reasonable and necessary actions to intensify the state's current level of monitoring, analyzing, reporting, and responding to medical assistance program claims data maintained by the state's Medicaid Management Information System fiscal agents and ensure that any data abnormalities identified are reported to the office for appropriate action;

(5) Make efforts to improve the utilization of data in order to better assist the office in identifying fraud and abuse within the medical assistance program and to identify and implement further program and patient care reforms for the improvement of the program;

(6) Identify additional data elements that are maintained and otherwise accessible by the state, directly or through any of its contractors, that would, if coordinated with medical assistance data, further assist the office in increasing the effectiveness of data analysis for the management of the medical assistance program;

(7) Provide or arrange in-service training for state and county medical assistance personnel to increase the capability for state and local data analysis to move toward a more cost-effective operation of the medical assistance program;

(8)(A) No later than January 1, 2014, assist the office in developing, testing, and implementing an automated process for the targeted review of claims, services, and populations or a combination of claims, services, and populations.

(B) A review under subdivision (b)(8)(A) of this section is to identify statistical aberrations in the use or billing of the services and to assist in the development and implementation of measures to ensure that service use and billing are appropriate to recipients' needs; and

(9) Pay providers for underpayments identified through actions of the office.

(c)(1) The methods developed and recommended under subdivision (b)(1) of this section shall address without limitation the development, testing, and implementation of an automated claims review process that, before payment, shall subject a medical assistance program services claim to review for proper coding and another review as may be necessary.

(2) Services subject to review shall be based on:

(A) The expected cost-effectiveness of reviewing the service;

(B) The capabilities of the automated system for conducting the review; and

(C) The potential to implement the review with negligible effect on the turnaround of claims for provider payment or on recipient access to necessary services.

(3) A review under subdivision (c)(2) of this section shall be designed to provide for the efficient and effective operation of the medical

assistance program claims payment system by performing functions, including without limitation:

(A) Capturing coding errors, misjudgments, or incorrect or multiple billing for the same service; and

(B) Possible excesses in billing or service use, whether intentional or unintentional.

(d)(1) No later than December 1, 2013, the Director of the Department of Human Services in conjunction with the office shall prepare and submit an interim report to the Governor and the cochairs of the Legislative Council on the implementation of the initiatives under this section.

(2) The report under subdivision (d)(1) of this section shall also include a recommendation for a revision that would further facilitate the goals of this section, including recommendations for expansion.

(e) Applicable medical assistance program rules, provider manuals, and administrative policies, procedures, and guidance will be posted on the office's website, or by a link from the website to the department's website.

History. Acts 2013, No. 1499, § 2.

20-77-2511. Provider compliance program.

(a) The General Assembly finds that:

(1) Medical assistance providers potentially are able to detect and correct payment and billing mistakes and fraud if required to develop and implement compliance programs;

(2) A provider compliance program makes it possible to organize provider resources to resolve payment discrepancies, detect inaccurate billings as quickly and efficiently as possible, and to impose systemic checks and balances to prevent future recurrences;

(3) It is in the public interest that providers within the medical assistance program implement compliance programs;

(4) The wide variety of provider types in the medical assistance program necessitates a variety of compliance programs that reflect a provider's size, complexity, resources, and culture;

(5) For a compliance program to be effective, it must be designed to be compatible with the provider's characteristics;

(6) Key components shall be included in each compliance program if a provider is to be a medical assistance program participant; and

(7) A provider should adopt and implement an effective compliance program appropriate to the provider.

(b) A provider of medical assistance program items and services that receives annually seven hundred fifty thousand dollars (\$750,000) or more through the state Medicaid program shall adopt and implement a compliance program.

(c)(1) The Office of Medicaid Inspector General shall create and make available on its website guidelines including a model compliance program.

(2) A model compliance program under subdivision (c)(1) of this section shall be applicable to billings to and payments from the medical assistance program but need not be confined to billings and payments.

(3) The model compliance program required under subdivision (c)(1) of this section may be a component of a more comprehensive compliance program by the medical assistance provider if the comprehensive compliance program meets the requirements of this section.

(d) A compliance program shall include without limitation:

(1) A written policy and procedure that:

(A) Describes compliance expectations;

(B) Describes the implementation of the operation of the compliance program;

(C) Provides guidance to employees and others on dealing with potential compliance issues;

(D) Identifies a method for communicating compliance issues to appropriate compliance personnel; and

(E) Describes the method by which potential compliance problems are investigated and resolved;

(2)(A) Designation of an employee vested with responsibility for the operation of the compliance program.

(B) The designated employee's duties may solely relate to compliance or may be combined with other duties if compliance responsibilities are satisfactorily carried out.

(C) The designated employee shall report directly to the entity's chief executive or other senior administrator and periodically shall report directly to the governing body of the provider on the activities of the compliance program;

(3)(A) Training and education of affected employees and persons associated with the provider, including executives and governing body members, on compliance issues, expectations, and the compliance program operation.

(B) The training under subdivision (d)(3)(A) of this section shall occur periodically and shall be made a part of the orientation for a new employee, appointee, associate, executive, or governing body member;

(4)(A) Lines of communication to the designated compliance employee that are accessible to all employees, persons associated with the provider, executives, and governing body members to allow compliance issues to be reported.

(B) The lines of communication under subdivision (d)(4)(A) of this section shall include a method for anonymous and confidential good-faith reporting of potential compliance issues as they are identified;

(5) Disciplinary policies to encourage good-faith participation in the compliance program by an affected individual, including a policy that articulates expectations for reporting compliance issues and assisting in their resolution and outlines sanctions for:

(A) Failing to report suspected problems;

- (B) Participating in noncompliant behavior; and
- (C) Encouraging, directing, facilitating, or permitting noncompliant behavior;
- (6) A system for routine identification of compliance risk areas specific to the provider type for:
 - (A) Self-evaluation of the risk areas, including internal audits and as appropriate external audits; and
 - (B) Evaluation of potential or actual noncompliance as a result of the self-evaluations and audits;
- (7) A system for:
 - (A) Responding to compliance issues as they are raised;
 - (B) Investigating potential compliance problems;
 - (C) Responding to compliance problems as identified in the course of self-evaluations and audits;
 - (D) Correcting problems promptly and thoroughly and implementing procedures, policies, and systems to reduce the potential for recurrence;
 - (E) Identifying and reporting compliance issues to the Department of Human Services or the Office of Medicaid Inspector General; and
 - (F) Refunding overpayments; and
- (8) A policy of nonintimidation and nonretaliation for good-faith participation in the compliance program, including without limitation:
 - (A) Reporting potential issues;
 - (B) Investigating issues;
 - (C) Self-evaluations;
 - (D) Audits and remedial actions; and
 - (E) Reporting to appropriate officials.
- (e)(1) Upon enrollment in the medical assistance program, a provider shall certify to the Department of Human Services that the provider satisfactorily meets the requirements of this section.
- (2) The Medicaid Inspector General shall determine whether a provider has a compliance program that satisfactorily meets the requirements of this section by requesting no more than one (1) time every year an updated certification that the provider satisfactorily meets the requirements of this section.
- (f) A compliance program that is accepted by the United States Department of Health and Human Services' Office of Inspector General and remains in compliance with the standards of the Office of Medicaid Inspector General is in compliance with this section.
- (g) If the Medicaid Inspector General finds that a provider does not have a satisfactory compliance program within ninety (90) days after the effective date of a rule adopted under this section, the provider is subject to any sanction or penalty permitted by a state law or rule or a federal law or regulation, including revocation of the provider's agreement to participate in the medical assistance program.
- (h)(1) The Office of Medicaid Inspector General shall adopt rules to implement this section.
- (2) The rules shall be subject to review by the Legislative Council.

History. Acts 2013, No. 1499, § 2.

20-77-2512. Applicability of Medicaid Fairness Act.

The Medicaid Fairness Act, § 20-77-1701 et seq., applies to this subchapter.

History. Acts 2013, No. 1499, § 2.

20-77-2513. Enterprise Fraud Program.

(a) To realize savings to the Arkansas Medicaid Program and taxpayers as soon as possible, within ninety (90) days after July 1, 2014, the Office of Medicaid Inspector General shall establish a program known as the “Enterprise Fraud Program” that is focused on fraud, waste, abuse, and improper payments within the Arkansas Medicaid Program that utilizes state-of-the-art enterprise fraud detection technology to further support the detection and prevention within the Arkansas Medicaid Program.

(b)(1) The office shall procure through a competitive bid an enterprise technology solution to detect and prevent fraud, waste, abuse, and improper payments.

(2) The enterprise technology solution shall use current industry standards to provide:

(A) Automated detection and alerting;

(B) Continuous monitoring of Arkansas Medicaid Program transactions;

(C) Identification of fraud, noncompliance, and improper payments both prospectively and retrospectively;

(D) Detection of nontransactional fraud such as Arkansas Medicaid Program eligibility issues and identity theft;

(E) Use of state-of-the-art analytical techniques, including without limitation:

(i) Predictive modeling;

(ii) Complex pattern analysis;

(iii) Link analysis;

(iv) Text mining; and

(v) Geospatial analysis;

(F) Feedback and self-learning capability that allow the technology to adapt to changing schemes and trends; and

(G) Demonstrated experience hosting sensitive and regulated state data.

(3) The payment for the enterprise technology solution shall be structured to provide the most economical cost to the state.

(4) The office shall begin the design phase of the procurement process upon establishment of the Enterprise Fraud Program.

(5)(A)(i) The Department of Human Services shall seek implementation funding from the Centers for Medicare & Medicaid Services as soon as possible.

(ii) If at least eighty percent (80%) of the funding required for the appropriation provided by this section is not received through federal matching funds from the Centers for Medicare & Medicaid Services, the Enterprise Fraud Program shall not be implemented.

(B) If the department applies for and receives any state, federal, or private funds to assist with the implementation and operation of the Enterprise Fraud Program, the department shall enter into a memorandum of understanding with other state agencies to share the cost of implementation as needed.

(c)(1) Beginning October 1, 2014, the office shall provide quarterly reports, or more frequent reports if requested by and of the following recipients, to:

(A) The cochairs of the Joint Performance Review Committee;

(B) The Chair of the House Committee on State Agencies and Governmental Affairs;

(C) The Chair of the Senate Committee on State Agencies and Governmental Affairs;

(D) The Chair of the House Committee on Public Health, Welfare, and Labor; and

(E) The Chair of the Senate Committee on Public Health, Welfare, and Labor.

(2) The report shall include without limitation:

(A) Beginning October 1, 2014:

(i) Comprehensive data regarding the establishment and operations of the Enterprise Fraud Program, including without limitation the progress of procuring the enterprise technology solution; and

(ii) The resources and processes of each participating state agency to investigate the leads provided by the enterprise technology solution; and

(B) Beginning July 1, 2015:

(i) Incidents, types, and amounts of fraud identified;

(ii) The amount actually recovered as a result of fraud identifications;

(iii) Expected cost avoidance through benefits not issued or denied, prepayment intervention, and future behavior change through intervention; and

(iv) Proposed procedural changes resulting from fraud identification and the timeline for implementing the procedural changes.

History. Acts 2014, No. 259, § 5.

SUBCHAPTER 26 — ARKANSAS LAY CAREGIVER ACT

SECTION.	SECTION.
20-77-2601. Title.	20-77-2605. Notification to caregiver.
20-77-2602. Definitions.	20-77-2606. Consultation with caregiver
20-77-2603. Designation of caregiver.	— Discharge plan.
20-77-2604. Compensation to caregiver.	20-77-2607. Construction — Immunity.

20-77-2601. Title.

This act shall be known and may be cited as the “Arkansas Lay Caregiver Act”.

History. Acts 2015, No. 1013, § 1.

20-77-2602. Definitions.

As used in this subchapter:

(1) “Aftercare” means assistance that:

(A) Is provided by a caregiver to a patient after the discharge of the eligible patient from a hospital;

(B) Is related to the condition of the patient at the time of discharge; and

(C) Does not require a professional license under Arkansas Code Title 17, Subtitle 3, or specialized training under § 20-77-2301 et seq. in order to perform the assistance;

(2) “Caregiver” means an individual who:

(A) Is eighteen (18) years of age or older;

(B) Provides aftercare to an individual; and

(C) Is identified by the patient or, if applicable, the legal guardian of the patient as a person who is involved with the health care of the patient under 45 C.F.R. § 164.510(b), as it existed on January 1, 2015;

(3) “Compensation” means money or another type of property of value received by an individual in exchange for the assistance or services without regard to the source of payment of the money or other type of property;

(4) “Discharge” means the release of a patient from hospital care to the residence of the patient following an inpatient admission;

(5) “Hospital” means a facility that is licensed by the Division of Health Facility Services under § 20-9-213 as either a surgery and general medical care hospital or a general hospital;

(6) “Legal guardian” means an individual who is appointed by the court to make decisions about the health or medical care of a patient;

(7) “Patient” means an individual who has been admitted to a hospital for inpatient care and who is eighteen (18) years of age or older; and

(8) “Residence” means the dwelling that the patient considers to be the home of the patient, but does not include any rehabilitative facility, hospital, nursing home, assisted living facility, group home, or other healthcare facility licensed by the Division of Health Facility Services or the Office of Long-Term Care.

History. Acts 2015, No. 1013, § 1.

20-77-2603. Designation of caregiver.

(a)(1) A hospital shall provide each patient or, if applicable, the patient's legal guardian, with an opportunity to designate a caregiver following the patient's admission into a hospital and before the discharge of the patient to the residence of the patient.

(2) Before discharge, a patient may elect to change the patient's designated caregiver in the event that the original designated caregiver becomes unavailable, unwilling, or unable to care for the patient.

(b) Designation of an individual as a caregiver pursuant to this section does not obligate that individual to accept the role of caregiver for the patient.

(c) This section does not require a patient to designate a caregiver.

(d) The hospital shall be deemed to have complied in full with the requirements of this subchapter in the event that the patient or, if applicable, the legal guardian of the patient:

(1) Declines to designate a caregiver under this section; or

(2) Objects to the disclosure of medical information concerning the patient to the caregiver.

History. Acts 2015, No. 1013, § 1.

20-77-2604. Compensation to caregiver.

(a) A caregiver designated under this subchapter shall not accept compensation in exchange for aftercare provided to the patient.

(b) This subchapter does not prevent an individual who is a licensed medical professional under Arkansas Code Title 17, Subtitle 3, or has completed training as a trained in-home assistant under § 20-77-2301 et seq. from serving as a caregiver under this subchapter so long as the individual does not accept compensation in exchange for aftercare provided to the patient.

History. Acts 2015, No. 1013, § 1.

20-77-2605. Notification to caregiver.

(a) If a patient has designated a caregiver, the hospital shall notify the designated caregiver of the patient concerning the discharge or transfer of the patient to another licensed facility as soon as possible before discharge or transfer.

(b) In the event that the hospital is unable to contact the designated caregiver, the lack of contact shall not interfere with, delay, or otherwise affect the medical care provided to the patient or an appropriate discharge of the patient.

History. Acts 2015, No. 1013, § 1.

20-77-2606. Consultation with caregiver — Discharge plan.

(a)(1) As soon as practicable before the discharge of the patient, the hospital shall attempt to consult with the designated caregiver to prepare the caregiver to provide for the aftercare needs of the patient.

(2) As part of the consultation under subdivision (a)(1) of this section, the hospital shall provide the designated caregiver the opportunity to ask questions and receive answers about the aftercare needs of the patient.

(b)(1) At or before discharge, the hospital shall provide the caregiver with the discharge plan of the patient that describes any aftercare needs of the patient.

(2) The hospital will educate the caregiver concerning the aftercare of the patient in a manner that is consistent with current accepted practices and is based on the learning needs of the caregiver.

(c) In the event that the hospital is unable to contact the designated caregiver, the lack of contact shall not interfere with, delay, or otherwise affect an appropriate discharge of the patient.

History. Acts 2015, No. 1013, § 1.

20-77-2607. Construction — Immunity.

(a) This subchapter shall not:

(1) Confer upon the caregiver any authority to make healthcare decisions on behalf of the patient;

(2) Create a private right of action against a hospital, hospital employee, or duly authorized agent of the hospital; or

(3) Remove the obligation of a third-party payer to cover a healthcare item or service that the third-party payer is obligated to provide to a patient under the terms of a valid agreement, insurance policy, plan, or certification of coverage or health maintenance organization contract.

(b) A hospital, hospital employee, contractor leaving a contractual relationship with a hospital, or duly authorized agent of a hospital shall not be held liable in any way for an act or omission of the caregiver.

History. Acts 2015, No. 1013, § 1.

SUBCHAPTER 27 — MEDICAID PROVIDER-LED ORGANIZED CARE ACT

SECTION.

20-77-2701. Title.

20-77-2702. Legislative intent and purpose.

20-77-2703. Definitions.

20-77-2704. Licensure by Insurance Commissioner.

20-77-2705. Excluded services.

SECTION.

20-77-2706. Characteristics and duties of risk-based provider organization.

20-77-2707. Reporting and performance measures.

20-77-2708. Waiver and rulemaking authority.

A.C.R.C. Notes. Acts 2017, No. 775, § 7, provided: "Implementation of Medicaid Provider-Led Organized Care Act.

"(a) The Medicaid Provider-Led Organized Care Act, § 20-77-2701 et seq., shall be implemented as follows:

"(1) On or before June 1, 2017, the Insurance Commissioner shall adopt rules for the licensure of risk-based provider organizations to implement the Medicaid Provider-Led Organized Care Act, § 20-77-2701 et seq.;

"(2)(A) On or before July 1, 2017, an organization seeking conditional licensure in state for fiscal year 2018 to become a risk-based provider organization shall submit an application to the commissioner.

"(B) An organization may receive conditional license as a risk-based provider organization upon demonstration of a governing board and sufficient agreements with various providers of medical goods and services.

"(C) A license issued conditionally shall expire on December 31, 2017, or a later date as established by the commissioner;

"(3) On or before October 1, 2017, an organization with conditional license shall:

"(A) Be capable of enrolling members of enrollable Medicaid beneficiary populations into the risk-based organization;

"(B) Demonstrate to the approval of the commissioner the ability to establish an adequate medical service delivery network; and

"(C)(i) Provide evidence of a bond issued by a surety authorized to do business in this state in the amount of two hundred fifty thousand dollars (\$250,000).

"(ii) The bond shall provide that the surety and the organization shall be jointly and severally liable for payment of the bond amount in the event the organization abandons efforts to obtain full licensure.

"(iii) Any payouts on a bond issued under this section shall be paid to the Arkansas Medicaid Program Trust Fund;

"(4) On or before January 1, 2018, an organization with conditional license shall demonstrate to the commissioner that it has met the solvency and financial requirements for a risk-based organization as established by the commissioner; and

"(5) On or before April 1, 2018, or a later date established by the commis-

sioner, an organization with conditional license shall demonstrate to the commissioner that the organization is capable of assuming the risk of a global payment and arranging for provision of healthcare services to the enrollable Medicaid beneficiary populations.

"(b)(1) Failure to comply with any one (1) of the milestones outlined in subsection (a) of this section shall be grounds for termination of a conditional licensure or full licensure.

"(2) The commissioner shall award full licensure to a risk-based provider organization with conditional licensure if the organization timely meets each of the milestones outlined in subsection (a) of this section.

"(3) Failure by an organization to timely meet one (1) or more of the milestones outlined in subsection (a) of this section shall not prevent the commissioner, in his or her sole discretion, from granting full licensure to the organization as long as the organization has met all of the milestones outlined in subsection (a) of this section by January 1, 2018, or a later date established by the commissioner.

"(c) Implementation of the Medicaid Provider-Led Organized Care Act, § 20-77-2701 et seq., shall not be considered a rule under the Arkansas Administrative Procedure Act, § 25-15-201 et seq."

Acts 2017, No. 802, § 1, provided: "Medicaid provider-led organized care implementation and program savings plan.

"(a)(1) The Department of Human Services shall develop a five-year program savings plan to monitor all Medicaid savings realized by the department, including savings achieved through the delivery of healthcare by risk-based provider organizations within the Arkansas Medicaid Program.

"(2) The five-year program savings plan shall measure:

"(A) Increased care management and care coordination;

"(B) Value-based purchasing strategies;

"(C) Reductions in duplication of healthcare services;

"(D) Reductions in delivery of unnecessary healthcare services;

"(E) The degree of risk assumed by risk-based provider organizations; and

“(F) The amount of projected savings realized as part of the eight hundred thirty-five million dollars (\$835,000,000) in savings requested by the Governor.

“(b)(1) On and after September 1, 2017, the department shall report quarterly on the five-year savings plan to the Legislative Council, the Bureau of Legislative Research, and Arkansas Legislative Audit.

“(2) The initial report shall define projected net savings to the Arkansas Medicaid Program to trend on a quarterly basis to serve as the baseline for measuring the success of implementation and continuing operation, including success attributed to the Medicaid provider-led organized care system.

“(c)(1) If project savings in an amount less than five percent (5%) of the goal are not achieved during any two (2) consecutive quarters unrelated to nonclaims based performance, the department shall develop additional reforms to achieve the savings goals.

“(2) If legislative action is required to implement the additional reforms described in subdivision (c)(1) of this section, the department may take the action to the Legislative Council or the Executive Subcommittee of the Legislative Council for immediate action.”

Preambles. Acts 2017, No. 775, contained a preamble which read:

“WHEREAS, it is beneficial to the State of Arkansas to be a good steward of public money for sustainable programs for the future; and

“WHEREAS, it is beneficial to the people of the State of Arkansas to recognize the inherent value and contribution of individuals with disabilities; and

“WHEREAS, it is the policy of the State of Arkansas to:

“(1) Respect the rights and privileges conveyed by federal and state law to beneficiaries who are individuals with disabilities;

“(2) Support the right of individuals with disabilities to receive quality services without discrimination; and

“(3) Allow an individual with disabilities to:

“(A) Participate in all decisions regarding his or her care, including the right to refuse treatment, the right to continuity of care, and the right to choose among

providers who participate in his or her network; and

“(B) Receive services in his or her local community, or the community of his or her choice, and in the least restrictive setting; and

“WHEREAS, the State of Arkansas wishes to affirm the commitment to the principles of full and equal treatment and unlimited opportunities for all Arkansans that are afforded, as of February 1, 2017, to individuals with disabilities as a basic tenet of this legislation, NOW THEREFORE, ... ”

Effective Dates. Acts 2017, No. 775, § 8: Mar. 31, 2017. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the current method of serving the enrollable Medicaid beneficiary populations is resulting in excessive and unnecessary costs to the Arkansas Medicaid Program and to the State of Arkansas; that the enrollable Medicaid beneficiary populations are growing at a rate that is unsustainable under the current method of serving the enrollable Medicaid beneficiary populations; that the Medicaid provider-led organized care system will improve quality and efficiencies of healthcare services to enrollable Medicaid beneficiary populations by enhancing the performance of the broader healthcare system with increased access to care; that the Medicaid Provider-Led Organized Care Act requires healthcare providers to create, present to the Department of Human Services and the Insurance Commissioner for approval, implement, and market a new kind of organization that offers a type of health insurance; and that this act is immediately necessary to ensure efficient use of taxpayer dollars and to provide healthcare providers certainty about the law creating the Medicaid Provider-Led Organized Care Act before fully investing time, funds, personnel, and other resources to the development of the new risk-based provider organizations. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

20-77-2701. Title.

This subchapter shall be known and may be cited as the “Medicaid Provider-Led Organized Care Act”.

History. Acts 2017, No. 775, § 1.

20-77-2702. Legislative intent and purpose.

(a) As the single state agency for administration of the medical assistance programs established under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq., the Department of Human Services is authorized by federal law to utilize one (1) or more organizations for providing healthcare services to Medicaid beneficiary populations.

(b) The purpose of this subchapter is to establish a Medicaid provider-led organized care system that administers and delivers healthcare services for a member of an enrollable Medicaid beneficiary population in return for payment.

(c) It is the intent of the General Assembly that the Medicaid provider-led organized care system created by the department shall:

(1) Improve the experience of health care, including without limitation quality of care, access to care, and reliability of care, for enrollable Medicaid beneficiary populations;

(2) Enhance the performance of the broader healthcare system leading to improved overall population health;

(3) Slow or reverse spending growth for enrollable Medicaid beneficiary populations and for covered services while maintaining quality of care and access to care;

(4) Further the objectives of Arkansas payment reforms and the state’s ongoing commitment to innovation;

(5) Discourage excessive use of services;

(6) Reduce waste, fraud, and abuse;

(7) Encourage the most efficient use of taxpayer funds; and

(8) Operate under federal guidelines for patient rights.

History. Acts 2017, No. 775, § 1.

20-77-2703. Definitions.

As used in this subchapter:

(1) “Associated participant” means an organization or individual that is a member or contractor of a risk-based provider organization and provides necessary administrative functions, including without limitation claims processing, data collection, and outcome reporting;

(2) “Capitated” means an actuarially sound healthcare payment that is based on a payment per person that covers the total risk for providing healthcare services as provided in this subchapter for a person;

(3)(A) “Care coordination” means the coordination of healthcare services delivered by healthcare provider teams to empower patients in their health care and to improve the efficiency and effectiveness of the healthcare sector.

(B) “Care coordination” includes without limitation:

(i) Health education and coaching;

(ii) Promotion of links with medical home services and the health-care system in general;

(iii) Coordination with other healthcare providers for diagnostics, ambulatory care, and hospital services;

(iv) Assistance with social determinants of health, such as access to healthy food and exercise;

(v) Promotion of activities focused on the health of a patient and the community, including without limitation outreach, quality improvement, and patient panel management; and

(vi) Community-based management of medication therapy;

(4) “Carrier” means an organization that is:

(A) Licensed or otherwise authorized to transact health insurance as an insurance company under § 23-62-103;

(B) Authorized to provide healthcare plans under § 23-76-108 as a health maintenance organization; or

(C) Authorized to issue hospital service or medical service plans as a hospital medical service corporation under § 23-75-108;

(5)(A) “Covered Medicaid beneficiary population” means a group of individuals with:

(i) Significant behavioral health needs, including for substance abuse treatment and services, and who are eligible for participation in the Medicaid provider-led organized care system as determined by an independent assessment under criteria established by the Department of Human Services; or

(ii) Intellectual or developmental disabilities and who are eligible for participation in the Medicaid provider-led organized care system as determined by an independent assessment under criteria established by the department.

(B) “Covered Medicaid beneficiary population” does not include individuals enrolled in a long-term care services and supports program under 42 U.S.C. § 1396n or 42 U.S.C. § 1315, due to a physical functional limitation;

(6) “Direct service provider” means an organization or individual that delivers healthcare services to enrollable Medicaid beneficiary populations;

(7) “Enrollable Medicaid beneficiary population” means a group of individuals who are either:

(A) Members of a covered Medicaid beneficiary population; or

(B) Members of a voluntary Medicaid beneficiary population;

(8) “Flexible services” means alternative services that are not included in the state plan or waiver of the Arkansas Medicaid Program and that are appropriate and cost-effective services that improve the health or social determinants of a member of an enrollable Medicaid beneficiary population that affect the health of the member of the enrollable Medicaid beneficiary population;

(9) “Global payment” means a population-based payment methodology that is actuarially sound and based on an all-inclusive per-person-per-month calculation for all benefits, administration, care management, and care coordination for enrollable Medicaid beneficiary populations;

(10) “Medicaid” means the programs authorized under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq., as they existed on January 1, 2017, for the provision of healthcare services to members of enrollable Medicaid beneficiary populations;

(11) “Participating provider” means an organization or individual that is a member of or has an ownership interest in a risk-based provider organization and delivers healthcare services to enrollable Medicaid beneficiary populations;

(12) “Quality incentive pool” means a funding source established and maintained by the department to be used to reward risk-based provider organizations that meet or exceed specific performance and outcome measures;

(13) “Risk-based provider organization” means an entity that:

(A)(i) Is licensed by the Insurance Commissioner under the rules established for risk-based provider organizations by the commissioner.

(ii) Notwithstanding any other provision of law, a risk-based provider organization is an insurance company upon licensure by the commissioner but is not deemed an insurer for purposes of the Arkansas Life and Health Insurance Guaranty Association Act, § 23-96-101 et seq.

(iii) The commissioner shall not license a risk-based provider organization except as provided in this subchapter;

(B) Is obligated to assume the financial risk for the delivery of specifically defined healthcare services to an enrollable Medicaid beneficiary population; and

(C) Is paid by the department on a capitated basis with a global payment made, whether or not a particular member of an enrollable Medicaid beneficiary population receives services during the period covered by the payment; and

(14) “Voluntary Medicaid beneficiary population” means a group of individuals who:

(A) Are in need of behavioral health services or developmental disabilities services;

(B) Are eligible for the Arkansas Medicaid Program; and

(C) May elect to enroll in a risk-based provider organization if the group is not otherwise excluded by this subchapter.

History. Acts 2017, No. 775, § 1.

20-77-2704. Licensure by Insurance Commissioner.

(a) The Insurance Commissioner may license for participation in the Medicaid provider-led organized care system one (1) or more risk-based provider organizations that satisfactorily meet licensure requirements and are capable of coordinating the delivery and payment of healthcare services for the enrollable Medicaid beneficiary populations.

(b) The commissioner shall require a risk-based provider organization to enroll members of covered Medicaid beneficiary populations statewide.

History. Acts 2017, No. 775, § 1.

20-77-2705. Excluded services.

(a) Except as provided in subsection (b) of this section, all healthcare services delivered through the Medicaid provider-led organized care system shall:

(1) Be available for all members of covered Medicaid beneficiary populations; and

(2) Be comparable in amount, duration, or scope as compared to other Medicaid-eligible individuals as specified in the state plan for medical assistance.

(b) The Medicaid provider-led organized care system shall be implemented to the extent possible, but shall not include the following services when provided to enrollable Medicaid beneficiary populations:

(1) Nonemergency medical transportation in a capitated program;

(2) Dental benefits in a capitated program;

(3) School-based services provided by school employees;

(4) Skilled nursing facility services;

(5) Assisted living facility services;

(6) Human development center services; or

(7) Waiver services provided to adults with physical disabilities through the ARChoices in Homecare program or the Arkansas IndependentChoices program.

History. Acts 2017, No. 775, § 1.

20-77-2706. Characteristics and duties of risk-based provider organization.

(a) A risk-based provider organization shall:

(1) Be authorized to conduct business in the state;

(2) Hold a valid certificate of authority issued by the Secretary of State;

(3) Have an ownership interest of not less than fifty-one percent (51%) by participating providers; and

(4) Include within membership of the risk-based provider organization:

(A) An Arkansas licensed or certified direct service provider of developmental disabilities services;

(B) An Arkansas licensed or certified direct service provider of behavioral health services;

(C) An Arkansas licensed hospital or hospital services organization;

(D) An Arkansas licensed physician practice; and

(E) A pharmacist who is licensed by the Arkansas State Board of Pharmacy.

(b) A risk-based provider organization that meets the requirements of subsection (a) of this section may include any of the following entities for access to and coordination with direct service providers and to facilitate access to flexible services and other community and support services:

(1) A carrier;

(2) An administrative entity;

(3) A federally qualified health center;

(4) A rural health clinic;

(5) An associated participant; or

(6) Any other type of direct service provider that delivers or is qualified to deliver healthcare services to enrollable Medicaid beneficiary populations.

(c) A risk-based provider organization may provide healthcare services directly to enrollable Medicaid beneficiary populations or through:

(1) A direct service provider that is a participating provider in the risk-based provider organization;

(2) A direct service provider subcontracted by the risk-based provider organization; or

(3) An independent provider that enters into a provider agreement or business relationship with a direct service provider.

(d)(1) Except as provided in subdivision (d)(2) of this section, reimbursement rates paid by a risk-based provider organization to direct service providers shall:

(A) Be determined by mutual agreement of the risk-based provider organization and direct service provider without regard to Medicaid provider rates established by the Department of Human Services; and

(B) Assure efficiency, economy, quality, and equal access to enrollable Medicaid beneficiary populations in the same manner as to individuals who are not covered by the Arkansas Medicaid Program.

(2) The reimbursement rates established by a risk-based provider organization shall not be subject to any administrative review by the Insurance Commissioner.

(3) A risk-based provider organization may contract with the Community Pharmacy Enhanced Services Network to provide enhanced pharmacist services to manage complex patients at a mutually agreed upon rate schedule.

(e)(1) Except as provided in subdivision (e)(2) of this section, all policies and procedures regarding the provision of healthcare services by a direct service provider shall:

(A) Be determined by mutual agreement of the risk-based provider organization and the direct service provider without regard to Medicaid provider rates established by the Department of Human Services; and

(B) Assure efficiency, economy, quality, and equal access to the enrollable Medicaid beneficiary population in the same manner as individuals who are not covered by the Arkansas Medicaid Program.

(2) A direct service provider that is delivering services to the enrollable Medicaid beneficiary populations shall:

(A) Meet any licensing or certification requirements set by law or rule; and

(B) Not otherwise be disqualified from participating in the Arkansas Medicaid Program or Medicare.

(f) Upon licensure by the commissioner, a risk-based provider organization shall perform the following functions:

(1) Enroll members of enrollable Medicaid beneficiary populations into the risk-based provider organization and remove members of enrollable Medicaid beneficiary populations from the risk-based provider organization;

(2) Ensure the following:

(A) Protection of beneficiary rights and due process in accordance with federally mandated regulations governing Medicaid managed care organizations;

(B) Proper credentialing of direct service providers in accordance with state and federal requirements;

(C) Care coordination of members enrolled into the risk-based provider organization; and

(D) A consumer advisory council consisting of consumers of developmental disability services and behavioral health services, including substance abuse treatment and services;

(3) Process claims or otherwise ensure payment to direct service providers within time frames established under federal regulations for goods and services delivered to the enrollable Medicaid beneficiary populations;

(4) Maintain the following:

(A) A network of direct service providers sufficient to ensure that all services to recipients are adequately accessible within time and distance requirements defined by the state; and

(B) A reserve of six million dollars (\$6,000,000) and an additional amount as determined by the commissioner at the initial licensure based upon the risk assumed and the projected liabilities under standards promulgated by rules of the State Insurance Department;

(5) Comply with all data collection and reporting requirements established by the commissioner;

(6) Provide the following:

(A) Financial reports and information to the commissioner as required by the commissioner in rules applicable to risk-based provider organizations; and

(B) Practice and clinical support to direct service providers; and

(7) Manage the following:

(A)(i) Global capitated payments and the attendant financial risks for delivery of services to the enrollable Medicaid beneficiary populations.

(ii) The Department of Human Services shall develop actuarially sound capitated rates for a defined scope of services under a risk methodology that may include risk adjustments, reinsurance, and stop-loss funding methods; and

(B)(i) Incentive payments received from the Department of Human Services when quality and outcome measures are achieved.

(ii) The Department of Human Services shall develop rules, in consultation with direct service providers for individuals with behavioral health needs and individuals with intellectual and development disabilities, establishing criteria for quality incentive payments to encourage and reward delivery of high-quality care and services by a risk-based provider organization.

History. Acts 2017, No. 775, § 1.

20-77-2707. Reporting and performance measures.

(a)(1) On a quarterly basis, a risk-based provider organization shall submit to the Department of Human Services protected health information for each member of a covered Medicaid beneficiary population and a voluntary Medicaid beneficiary population enrolled with the risk-based provider organization in accordance with standards and procedures adopted by the department, including without limitation:

(A) Claims data, including without limitation:

(i) Denial rates; and

(ii) Claims-paid rates;

(B) Encounter data;

(C) Unique identifiers;

(D) Geographic and demographic information;

(E) Patient satisfaction scores; and

(F) Other information as required by the state.

(2) Personally identifiable data submitted under this section shall be treated as confidential and is exempt from disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq.

(b) The department shall use the data submitted under subsection (a) of this section to measure the performance of the risk-based provider organization in:

(1) Delivery of services;

(2) Patient outcomes;

(3) Efficiencies achieved; and

(4) Quality measures.

(c) Performance measures established by the department shall at a minimum monitor:

(1) Reduction in unnecessary hospital emergency department utilization;

(2) Adherence to prescribed medication regimens;

(3) Reduction in avoidable hospitalizations for ambulatory-sensitive conditions; and

(4) Reduction in hospital readmissions.

(d) The department shall issue funds from the quality incentive pool above the amount of the global payments initially provided to a risk-based provider organization that meets or exceeds specific performance and outcome measures established by the department.

(e) On a quarterly basis, the department shall report to the Legislative Council, or to the Joint Budget Committee if the General Assembly is in session, available information regarding:

(1) Risk-based provider organization membership enrollment and distribution;

(2) Patient experience data; and

(3) Financial performance, including demonstrated savings.

History. Acts 2017, No. 775, § 1.

20-77-2708. Waiver and rulemaking authority.

The Department of Human Services:

(1) Shall submit an application for any federal waivers, federal authority, or state plan amendments necessary to implement this subchapter; and

(2) May promulgate rules as necessary to implement this subchapter.

History. Acts 2017, No. 775, § 1.

SUBCHAPTER 28 — ASSESSMENT FEE AND PROGRAM ON MEDICAL TRANSPORTATION PROVIDERS

SECTION.

20-77-2801. Legislative findings and intent.

20-77-2802. Definitions.

20-77-2803. Medical transportation provider assessment.

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20-77-2805. Medical Transportation Assessment Account.

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SECTION.

20-77-2807. Quarterly notice and collection.

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20-77-2809. Emergency medical transportation access payments.

20-77-2810. Effectiveness — Cessation.

20-77-2811. State plan amendment.

20-77-2801. Legislative findings and intent.

- (a) The General Assembly finds that:
- (1) Emergency medical services constitute an invaluable part of the healthcare delivery system of Arkansas;
 - (2) Emergency medical services will be a key element in any healthcare reform initiative;
 - (3) Emergency medical services are a key component of any economic development program as emergency medical services are essential to recruiting and retaining industry;
 - (4) Emergency medical services are a critical element of the emergency preparedness system within Arkansas; and
 - (5) While containing the cost of funding within the Arkansas Medicaid Program and providing healthcare services for the poor and uninsured individuals of this state are vital interests, the challenges associated with appropriate reimbursement for emergency medical services under the Arkansas Medicaid Program are recognized.
- (b) It is the intent of the General Assembly to assure appropriate reimbursement by establishing an assessment on emergency medical services to preserve vital emergency medical services for all residents of Arkansas.

History. Acts 2017, No. 969, § 1.

20-77-2802. Definitions.

As used in this subchapter:

- (1) "Air ambulance services" means services authorized and licensed by the Department of Health to provide care and air transportation of patients;
- (2) "Ambulance services" means services authorized and licensed by the department to provide care and transportation of patients upon the streets and highways of Arkansas;
- (3) "Emergency medical services" means:
 - (A) The transportation and medical care provided an ill or injured person before arrival at a medical facility by licensed emergency medical services personnel or other healthcare provider;
 - (B) Continuation of the initial emergency care within a medical facility subject to the approval of the medical staff and governing board of that facility; and
 - (C) Integrated medical care in emergency and nonurgent settings with the oversight of a physician;
- (4)(A) "Medical transportation" means emergency medical services provided through ambulance services and air ambulance services.
 - (B) "Medical transportation" does not include nonemergency ambulance services;
- (5) "Medical transportation provider" means a licensed provider of medical transportation;
- (6) "Net operating revenue" means the gross revenues earned for providing medical transportation in Arkansas, excluding amounts

refunded to or recouped, offset, or otherwise deducted by a patient or payer for medical transportation;

(7)(A) “Nonemergency ambulance services” means the transport in a motor vehicle to or from medical facilities, including without limitation hospitals, nursing homes, physicians’ offices, and other health-care facilities of persons who are ill or injured and who are transported in a reclining position.

(B) “Nonemergency ambulance services” does not include transportation provided by licensed hospitals that own and operate the ambulance for their own admitted patients;

(8) “Specialty-hospital-based ambulance services” means ambulance services provided by an acute care general hospital that limits health-care services primarily to children and qualifies as exempt from the Medicare prospective payment system regulation;

(9) “Upper payment limit” means the lesser of the customary charges of the medical transportation provider or the prevailing charges in the locality of the medical transportation provider for comparable services under comparable circumstances, calculated according to methodology in an approved state plan amendment for the Arkansas Medicaid Program; and

(10)(A) “Upper payment limit gap” means the difference between the upper payment limit of the medical transportation provider and the Medicaid payments not financed using medical transportation assessment made to all medical transportation providers.

(B) “Upper payment limit gap” is calculated separately for ambulance services and air ambulance services.

History. Acts 2017, No. 969, § 1.

20-77-2803. Medical transportation provider assessment.

(a)(1) Except as provided in this subchapter, an assessment is imposed on each medical transportation provider for each state fiscal year in an amount calculated as a percentage of the net operating revenues of the medical transportation provider.

(2) The assessment rate shall be determined annually based upon the percentage of net operating revenue needed to generate an amount up to the nonfederal portion of the upper payment limit gap plus the annual fee to be paid to the Arkansas Medicaid Program under § 20-77-2805(f)(1)(C), but in no case at a rate that would cause the assessment proceeds to exceed the indirect guarantee threshold set forth in 42 C.F.R. § 433.68(f)(3)(i).

(3) The assessment rate described in subsection (a) of this section shall be determined after consultation with The Arkansas Ambulance Association or its successor association.

(b) This subchapter does not authorize a unit of county or local government to license for revenue or impose a tax or assessment:

(1) Upon medical transportation providers; or

(2) Measured by the income or earnings of a medical transportation provider.

History. Acts 2017, No. 969, § 1.

20-77-2804. Program administration.

(a) The Director of the Division of Medical Services of the Department of Human Services shall administer the assessment program created in this subchapter.

(b)(1) The Division of Medical Services of the Department of Human Services shall adopt rules to implement this subchapter.

(2) Unless otherwise provided in this subchapter, the rules adopted under subdivision (b)(1) of this section shall not grant any exceptions to or exemptions from the medical transportation provider assessment imposed under § 20-77-2803.

(3) The rules adopted under subdivision (b)(1) of this section shall include any necessary forms for:

(A) Calculating of upper payment limits;

(B) Reporting of net operating revenue;

(C) Imposing and collecting of the medical transportation provider assessment imposed under § 20-77-2803; and

(D) Enforcing this subchapter, including without limitation letters of caution or sanctions.

(4) The rules adopted under subdivision (b)(1) of this section shall specify which time periods are used as the basis for the calculation of the assessment in each state fiscal year.

(c) To the extent practicable, the division shall administer and enforce this subchapter and collect the assessments, interest, and penalty assessments imposed under this subchapter using procedures generally employed in the administration of the division's other powers, duties, and functions.

History. Acts 2017, No. 969, § 1.

20-77-2805. Medical Transportation Assessment Account.

(a)(1) There is created within the Arkansas Medicaid Program Trust Fund a designated account known as the "Medical Transportation Assessment Account".

(2) The medical transportation provider assessments imposed under § 20-77-2803 shall be deposited into the Medical Transportation Assessment Account.

(b) Moneys in the Medical Transportation Assessment Account shall consist of:

(1) All moneys collected or received by the Division of Medical Services of the Department of Human Services from medical transportation provider assessments imposed under § 20-77-2803;

(2) Any interest or penalties levied in conjunction with the administration of this subchapter; and

(3) Any appropriations, transfers, donations, gifts, or moneys from other sources, as applicable.

(c) The Medical Transportation Assessment Account shall be separate and distinct from the General Revenue Fund Account of the State Apportionment Fund and shall be supplementary to the Arkansas Medicaid Program Trust Fund.

(d) Moneys in the Medical Transportation Assessment Account shall not be used to replace other general revenues appropriated and funded by the General Assembly or other revenues used to support Medicaid.

(e) The Medical Transportation Assessment Account shall be exempt from budgetary cuts, reductions, or eliminations caused by a deficiency of general revenues.

(f)(1) Except as necessary to reimburse any funds borrowed to supplement funds in the Medical Transportation Assessment Account, the moneys in the Medical Transportation Assessment Account shall be used only as follows:

(A) To make emergency medical transportation access payments under § 20-77-2809;

(B) To reimburse moneys collected by the division from medical transportation providers through error or mistake or under this subchapter; or

(C) To pay an annual fee to the division in the amount of three and three-fourths percent (3.75%) of the assessments collected from medical transportation providers under § 20-77-2803 each state fiscal year.

(2)(A) The Medical Transportation Assessment Account shall retain account balances remaining each fiscal year.

(B) At the end of each fiscal year, any positive balance remaining in the Medical Transportation Assessment Account shall be factored into the calculation of the new assessment rate by reducing the amount of medical transportation provider assessment funds that must be generated during the subsequent fiscal year.

(3) A medical transportation provider shall not be guaranteed that its emergency medical transportation access payments will equal or exceed the amount of its medical transportation provider assessment.

History. Acts 2017, No. 969, § 1.

Cross References. Arkansas Medicaid Program Trust Fund, § 19-5-985.

20-77-2806. Exemptions.

(a) The following medical transportation providers are exempt from the assessment imposed under § 20-77-2803 unless the exemption is adjudged to be unconstitutional or otherwise determined to be invalid:

(1) Volunteer ambulance services;

(2) Ambulance services owned by the state, county, or political subdivision;

(3) Nonemergency ambulance services;

- (4) Air ambulance services; and
- (5) Specialty-hospital-based ambulance services.
- (b) If an exemption under subsection (a) of this section is adjudged to be unconstitutional or otherwise determined to be invalid, the applicable medical transportation provider shall pay the assessment imposed under § 20-77-2803.

History. Acts 2017, No. 969, § 1.

20-77-2807. Quarterly notice and collection.

(a)(1) The annual medical transportation provider assessment imposed under § 20-77-2803 shall be due and payable on a quarterly basis.

(2) However, an installment payment of an assessment imposed by § 20-77-2803 shall not be due and payable until:

(A) The Division of Medical Services of the Department of Human Services issues the written notice required by § 20-77-2808(a) stating that the payment methodologies to medical transportation providers required under § 20-77-2809 have been approved by the Centers for Medicare & Medicaid Services and the waiver under 42 C.F.R. § 433.68 for the assessment imposed by § 20-77-2803, if necessary, has been granted by the Centers for Medicare & Medicaid Services;

(B) The thirty-day verification period required by § 20-77-2808(b) has expired; and

(C) The division has made all quarterly installments of emergency medical transportation access payments that were otherwise due under § 20-77-2809 consistent with the effective date of the approved state plan amendment and waiver.

(3) After the initial installment has been paid under this section, each subsequent quarterly installment payment of an assessment imposed by § 20-77-2803 shall be due and payable within ten (10) business days after the medical transportation provider has received its emergency medical transportation access payments due under § 20-77-2809 for the applicable quarter.

(b)(1) If a medical transportation provider fails to timely pay the full amount of a quarterly assessment, the division shall add to the assessment:

(A) A penalty assessment equal to five percent (5%) of the quarterly amount not paid on or before the due date; and

(B) On the last day of each quarter after the due date until the assessed amount and the penalty imposed under subdivision (b)(1)(A) of this section are paid in full, an additional five percent (5%) penalty assessment on any unpaid quarterly and unpaid penalty assessment amounts.

(2) Payments shall be credited first to unpaid quarterly amounts, rather than to penalty or interest amounts, beginning with the most delinquent installment.

(3) If the division is unable to recoup from Medicaid payments the full amount of any unpaid assessment or penalty assessment, or both, the division may file suit in a court of competent jurisdiction to collect up to double the amount due, the division's costs related to the suit, and reasonable attorney's fees.

History. Acts 2017, No. 969, § 1.

20-77-2808. Notice of assessment.

(a)(1) The Division of Medical Services of the Department of Human Services shall send a notice of assessment to each medical transportation provider informing the medical transportation provider of the assessment rate, the medical transportation provider's net operating revenue calculation, and the estimated assessment amount owed by the medical transportation provider for the applicable fiscal year.

(2) Except as set forth in subdivision (a)(3) of this section, annual notices of assessment shall be sent at least forty-five (45) days before the due date for the first quarterly assessment payment of each fiscal year.

(3) The first notice of assessment shall be sent within seventy-five (75) days after receipt by the division of notification from the Centers for Medicare & Medicaid Services that the payments required under § 20-77-2809 and, if necessary, the waiver granted under 42 C.F.R. § 433.68 have been approved.

(b) The medical transportation provider shall have thirty (30) days from the date of its receipt of a notice of assessment to review and verify the assessment rate, the medical transportation provider's net operating revenue calculation, and the estimated assessment amount.

(c)(1) If a medical transportation provider operates, conducts, or maintains more than one (1) medical transportation provider in the state, the medical transportation provider shall pay the assessment for each medical transportation provider separately.

(2) However, if the medical transportation provider operates more than one (1) medical transportation provider under one (1) Medicaid provider number, the medical transportation provider may pay the assessment for the medical transportation providers in the aggregate.

(d)(1) For a medical transportation provider subject to the assessment imposed under § 20-77-2803 that ceases to conduct medical transportation operations or maintain its state license or did not conduct medical transportation operations throughout a state fiscal year, the assessment for the state fiscal year in which the cessation occurs shall be adjusted by multiplying the annual assessment computed under § 20-77-2803 by a fraction, the numerator of which is the number of days during the year that the medical transportation provider operated and the denominator of which is three hundred sixty-five (365).

(2) Immediately upon ceasing to operate, the medical transportation provider shall pay the adjusted assessment for that state fiscal year to the extent not previously paid.

(e) A medical transportation provider subject to an assessment under this subchapter that has not been previously licensed as a medical transportation provider in Arkansas and that commences medical transportation operations during a state fiscal year shall pay the required assessment computed under § 20-77-2803 and shall be eligible for emergency medical transportation access payments under § 20-77-2809 on the date specified in rules promulgated by the division under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(f) A medical transportation provider that is exempted from payment of the assessment under § 20-77-2806 at the beginning of a state fiscal year but during the state fiscal year experiences a change in status so that it becomes subject to the assessment shall pay the required assessment computed under § 20-77-2803 and shall be eligible for emergency medical transportation access payments under § 20-77-2809 on the date specified in rules promulgated by the division under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(g) A medical transportation provider that is subject to payment of the assessment computed under § 20-77-2803 at the beginning of a state fiscal year but during the state fiscal year experiences a change in status so that it becomes exempted from payment under § 20-77-2806 shall be relieved of its obligation to pay the medical transportation provider assessment and shall become ineligible for emergency medical transportation access payments under § 20-77-2809 on the date specified in rules promulgated by the division under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 2017, No. 969, § 1.

20-77-2809. Emergency medical transportation access payments.

(a) To preserve and improve access to medical transportation services, for medical transportation services rendered on or after July 1, 2017, the Division of Medical Services of the Department of Human Services shall make emergency medical transportation access payments as set forth in this section.

(b) The division shall calculate the emergency medical transportation access payment amount as the balance of the Medical Transportation Assessment Account plus any federal matching funds earned on the balance, up to but not to exceed the upper payment limit gap for all medical transportation providers.

(c)(1) Except as provided in § 20-77-2806, all medical transportation providers shall be eligible for emergency medical transportation access payments each state fiscal year as set forth in this subsection.

(2)(A) In addition to any other funds paid to medical transportation providers for emergency medical services to Medicaid patients, each eligible medical transportation provider shall receive emergency medical transportation access payments each state fiscal year equal to the medical transportation provider's proportionate share of the

total upper payment limit gap for all providers of emergency medical services.

(B) Emergency medical transportation access payments shall be made on a quarterly basis.

(C) In addition to other rules as the division determines are necessary to implement emergency medical transportation access payments, the division may create separate levels of assessments and emergency medical transportation access payments for ambulance services and air ambulance services.

(d) An emergency medical transportation access payment shall not be used to offset any other payment by Medicaid for emergency or nonemergency services to Medicaid beneficiaries.

History. Acts 2017, No. 969, § 1.

20-77-2810. Effectiveness — Cessation.

(a) The medical transportation provider assessment imposed under § 20-77-2803 shall cease to be imposed, the emergency medical transportation access payments made under § 20-77-2809 shall cease to be paid, and any moneys remaining in the Medical Transportation Assessment Account in the Arkansas Medicaid Program Trust Fund shall be refunded to medical transportation providers in proportion to the amounts paid by them if:

(1) The Medical Transportation Assessment Account access payments required under § 20-77-2809 are changed or the assessments imposed under § 20-77-2803 are not eligible for federal matching funds under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., or Title XXI of the Social Security Act, 42 U.S.C. § 1397aa et seq.; or

(2) It is determined in the course of an administrative adjudication or in an action under § 25-15-207 that the Division of Medical Services of the Department of Human Services:

(A) Established Medicaid medical transportation provider payment rates that include an offset, in whole or in part, for any emergency medical transportation access payments under § 20-77-2809; or

(B) Included the net effect of any emergency medical transportation access payment under § 20-77-2809 when considering whether Medicaid medical transportation provider payment rates are:

(i) Consistent with efficiency, economy, and quality of care; and

(ii) Sufficient to enlist enough providers so that Medicaid care and services are available at least to the extent that the care and services are available to the general population in the geographic area.

(b)(1) The medical transportation provider assessment imposed under § 20-77-2803 shall cease to be imposed and the emergency medical transportation access payments under § 20-77-2809 shall cease to be paid if the assessment is determined to be an impermissible tax under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.

(2) Moneys in the Medical Transportation Assessment Account in the Arkansas Medicaid Program Trust Fund derived from assessments imposed before the determination described in subdivision (b)(1) of this section shall be disbursed under § 20-77-2809 to the extent federal matching is not reduced due to the impermissibility of the assessments, and any remaining moneys shall be refunded to medical transportation providers in proportion to the amounts paid by them.

History. Acts 2017, No. 969, § 1.

20-77-2811. State plan amendment.

(a) The Division of Medical Services of the Department of Human Services shall file with the Centers for Medicare & Medicaid Services a state plan amendment to implement the requirements of this subchapter, including the payment of emergency medical transportation access payments under § 20-77-2809, no later than forty-five (45) days after June 15, 2017.

(b) If the state plan amendment is not approved by the Centers for Medicare & Medicaid Services, the division shall:

- (1) Not implement the assessment imposed under § 20-77-2803; and
- (2) Return any assessment fees to the medical transportation providers that paid the fees if assessment fees have been collected.

History. Acts 2017, No. 969, § 1.

CHAPTER 78

CHILD CARE

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. CHILDCARE FACILITY LICENSING ACT.
- 3. AGREEMENTS WITH ADJOINING STATES.
- 4. CHILD CARE PROVIDERS' TRAINING COMMITTEE. [REPEALED.]
- 5. EARLY CHILDHOOD COMMISSION.
- 6. BACKGROUND CHECKS OF CHILDCARE FACILITY LICENSEES AND EMPLOYEES.
- 7. PRENATAL AND EARLY CHILDHOOD NURSE HOME VISITATION PROGRAM.
- 8. BIRTH THROUGH PREKINDERGARTEN TEACHING CREDENTIAL AND ENDORSEMENT.
- 9. HOME VISITATION. [REPEALED.]

RESEARCH REFERENCES

ALR. Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured. 68 A.L.R.4th 266.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

- 20-78-101. Family planning information for parents of children in state custody.
- 20-78-102. Arkansas Children's Hospital — Annual report.
- 20-78-103. State or federal funds — Licensing requirements.
- 20-78-104. Child Health and Family Life Institute.
- 20-78-105. Children's advocacy centers — Legislative intent.

SECTION.

- 20-78-106. Availability of records from children's advocacy centers during investigation of suspected cases of child abuse or neglect.
- 20-78-107. Criminal background checks for employees of private businesses that provide short-term child care for patrons — Definition.

Effective Dates. Acts 1981, No. 204, § 6: July 1, 1981. Emergency clause provided: "It is hereby found and determined by the Seventy-Third General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1981 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1981 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1981."

Acts 1983, No. 100, § 9: July 1, 1983. Emergency clause provided: "It is hereby found and determined by the Seventy-Fourth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1983 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1983 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being neces-

sary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1983."

Acts 1991, No. 657, § 6: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the Seventy-Eighth General Assembly that the effectiveness of this act on July 1, 1991 is essential to the effective operation of child care facilities and the operation of the Department of Human Services and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 1991 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1995, No. 1099, § 33: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the Eightieth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1995 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1995 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby de-

clared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1995.”

Acts 2014, No. 294, § 49: July 1, 2014. Emergency clause provided: “It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2014 is essential to the operation of the

agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2014 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2014.”

20-78-101. Family planning information for parents of children in state custody.

(a) The Department of Human Services shall provide informational materials, including, but not limited to, parenting, child abuse, substance abuse, sexual abuse, and family planning, to parents whose children have been placed in state custody.

(b) This information shall be provided to both natural and adoptive parents and shall be provided within thirty (30) days of placing the child in state custody.

History. Acts 1999, No. 1240, § 1.

Publisher's Notes. Former § 20-78-101, concerning the Arkansas Children's Hospital as an official agency for certain

children, was repealed by Acts 1989, No. 51, § 1. The section was derived from Acts 1929, No. 50, § 1; Pope's Dig., §§ 7482, 12596; A.S.A. 1947, § 7-501.

20-78-102. Arkansas Children's Hospital — Annual report.

In order to provide accountability to the citizens of Arkansas for funds appropriated to a private institution, Arkansas Children's Hospital shall file, annually, a certified annual financial and operations report with the Legislative Joint Auditing Committee and the Chief Fiscal Officer of the State.

History. Acts 1981, No. 204, § 2; 1983, No. 100, § 5; A.S.A. 1947, § 13-366.

20-78-103. State or federal funds — Licensing requirements.

(a) The Department of Human Services shall not expend any state or federal funds for childcare services to any childcare facility unless that facility is licensed or approved by the Division of Child Care and Early Childhood Education of the Department of Human Services, or registered with the department except where care is provided by a relative in a setting otherwise exempt from licensure.

(b) The provisions of this section shall not apply until January 1, 1992, to any facility which is currently exempt and which is providing childcare services to participants in the Project Success Program.

(c) Before that time, such facilities may apply for licensure or become registered with the department.

(d) After January 1, 1992, the facility must either be licensed or registered to qualify for state or federal funds.

History. Acts 1991, No. 657, §§ 1, 2. amendment in (a) began "Beginning July 1, 1991."
A.C.R.C. Notes. As enacted, the 1991

20-78-104. Child Health and Family Life Institute.

(a)(1) The Child Health and Family Life Institute shall be administered under the direction of Arkansas Children's Hospital.

(2) Arkansas Children's Hospital shall enter into a cooperative agreement or contract with the Department of Pediatrics of the University of Arkansas for Medical Sciences for services required in delivering the programs of the institute.

(3) The KIDS FIRST Program, a component of the institute, shall receive priority consideration above all other programs of the institute when funding decisions are made by Arkansas Children's Hospital.

(4) Arkansas Children's Hospital shall make quarterly reports to the Legislative Council on matters of funding, existing programs, and any new programs and services offered through the institute.

(b)(1) The Chancellor of the University of Arkansas for Medical Sciences shall designate an individual from the department who shall provide administrative oversight of the cooperative agreements or contract with Arkansas Children's Hospital in delivering the programs of the institute.

(2) The department shall make every effort to advance the KIDS FIRST Program statewide.

(3) The designated administrator from the department shall make quarterly reports to the chancellor and the Legislative Council on all matters of funding, existing programs, and services offered through the institute.

History. Acts 1995, No. 1099, § 27;
1995, No. 1198, § 96.

20-78-105. Children's advocacy centers — Legislative intent.

(a) Currently, sexually abused children often have to describe their sexual abuse several times to different professionals at different locations. Many investigations are conducted with little collaboration between the agencies involved in the cases. Each agency's child abuse professionals are officed in a different facility, and interface during the investigation and management of cases is limited. Sexual abuse medical examinations are commonly performed in hospital emergency rooms and other sites that are frightening to children, lack the proper equipment, and often are staffed by physicians uncomfortable with these exams. It is the intent of the General Assembly to institute pilot programs to provide the services just described under one (1) roof and

to provide a more child-friendly atmosphere, less trauma to the children and families, improved investigations and management, more effective utilization of multiagency information, greater protection of children, increased prosecution of perpetrators, and less unnecessary family intervention.

(b) In order to accomplish these goals, the Department of Arkansas State Police is hereby authorized to utilize moneys appropriated for its maintenance and general operation to make grants to and to contract with children's advocacy centers for facilities and services.

(c)(1) The Arkansas Child Abuse/Rape/Domestic Violence Commission shall advise the Department of Arkansas State Police as to children's advocacy centers which qualify for grants or contracts from the Department of Arkansas State Police.

(2) Qualified children's advocacy centers should:

(A) Provide a child-friendly, comfortable place for interviewing children and families, examining the children, and initiating services;

(B) Provide crisis intervention for the child and family as well as appropriate referrals for psychological treatment if not available on site; and

(C) Provide offices for law enforcement, employees of the Department of Human Services, and healthcare professionals in order to deliver collaborative evaluations and services.

History. Acts 1999, No. 1575, § 1.

20-78-106. Availability of records from children's advocacy centers during investigation of suspected cases of child abuse or neglect.

(a) Reports, correspondence, memoranda, case histories, medical records, or other materials compiled or gathered by a children's advocacy center shall be confidential and shall not be released or otherwise made available except:

(1) To the attorney representing the abused child in a custody or juvenile case with an order of appointment or an order recognizing entry of appearance;

(2) For any audit or similar activity conducted with the administration of any plan or program by any governmental agency that is authorized by law to conduct the audit or activity;

(3) To law enforcement agencies, a prosecuting attorney, or the Attorney General;

(4) To any licensing or registering authority to the extent necessary to carry out its official responsibilities, but the information shall be maintained as confidential;

(5) To a grand jury or court upon a finding that:

(A) Information in the record is necessary for the determination of a civil, criminal, or administrative issue before the court or grand jury; and

(B) The information cannot be obtained from a person or entity described in subdivision (b)(2) of this section;

(6) To the Department of Human Services;

(7) To a court-appointed special advocate volunteer with a valid court order;

(8) All records may be released to an attorney in any criminal, civil, or administrative proceeding or to a party in a criminal, civil, or administrative proceeding if the party is not represented by an attorney as permitted under criminal, civil, or administrative discovery rules upon a finding by the court that:

(A) Information in the record is necessary for the determination of a criminal, civil, or administrative issue before a court or grand jury; and

(B) The information cannot be obtained from a person or entity described in subdivision (b)(2) of this section;

(9) Medical records may be released to a person providing medical or psychiatric care or services to the abused child; and

(10) For bona fide instructional purposes by Arkansas Children's Hospital, the University of Arkansas for Medical Sciences, or a child advocacy center in the care, detection, treatment, and management of suspected child abuse and neglect.

(b)(1) Except as provided in subdivision (b)(2) of this section, no person or agency to whom disclosure is made may disclose to any other person reports or other information obtained under this section.

(2) Law enforcement agencies, a prosecuting attorney, the department, a court of competent jurisdiction, or the Attorney General may release reports or information obtained under this section. However, any report or information released under this subsection shall remain confidential.

(c)(1) Nothing in this section shall deny or diminish the right of an attorney for a party or a party to a criminal, civil, or administrative proceeding to receive discovery as provided in this section in order for the attorney or party to:

(A) Prepare for trial;

(B) File appropriate pleadings; or

(C) Present evidence in court.

(2)(A)(i) The circuit court shall issue protective orders under the Arkansas Rules of Criminal Procedure or the Arkansas Rules of Civil Procedure, as applicable, to ensure that those items of evidence for which there is a reasonable expectation of privacy and that otherwise should be sealed are not distributed to persons or institutions that have no legitimate interest in the evidence.

(ii) There is a reasonable expectation of privacy in the following items:

(a) Audio or videotapes of a child witness;

(b) Photographs of a child witness;

(c) Name of a child victim; and

(d) Medical records of a child victim.

(B)(i) The administrative hearing officer or administrative law judge shall issue protective orders to ensure that those items of evidence for which there is a reasonable expectation of privacy and that otherwise should be sealed are not distributed to persons or institutions that have no legitimate interest in the evidence.

(ii) There is a reasonable expectation of privacy in the following items:

- (a) Audio or videotapes of a child witness;
- (b) Photographs of a child witness;
- (c) Name of a child victim; and
- (d) Medical records of a child victim.

(C)(i) The circuit court may enforce the orders with criminal or civil contempt or sanctions, as appropriate.

(ii) The circuit court may modify or vacate a protective order for good cause.

(iii) If a protective order was entered and has not been vacated, the remedy for a violation of the protective order is limited to criminal or civil contempt or sanctions by the circuit court in which the protective order was entered.

(d) Except for purposes of enforcement concerning violations of a protective order under subsection (c) of this section, disclosure of information in violation of this section is a Class A misdemeanor.

History. Acts 2005, No. 1764, § 1; 2009, No. 1366, § 1; 2011, No. 1126, §§ 1, 2; 2013, No. 1174, § 1; 2014, No. 294, § 46; 2015, No. 591, §§ 1, 2; 2017, No. 264, § 5.

Amendments. The 2013 amendment, in the section heading, substituted “from” for “of” and added “hospitals, or clinics during an investigation of suspected cases of child abuse or neglect” at the end; substituted “during an investigation of a suspected case of child abuse or neglect by a children’s advocacy center, hospital, or clinic” for “centers performing the services described in § 20-78-105” in (a); in (a)(1), substituted “To” for “Medical records may be released to” and added “with an order of appointment or an order recognizing entry of appearance”; inserted present (a)(8) and redesignated former (a)(8) and (a)(9) as present (a)(9) and (a)(10); and added (c)(2)(A)(v), and (c)(2)(B)(v).

The 2014 amendment added (a)(11) [now (a)(10)].

The 2015 amendment, in the introductory language of (a), deleted “during an investigation of a suspected case of child abuse or neglect” following “gathered” and deleted “hospital, or clinic” following “advocacy center”; substituted “that” for “which” in (a)(2); deleted former (a)(8) and redesignated the remaining subdivisions accordingly; in (a)(10), substituted “by” for “at”, deleted “and” following “Hospital”, and substituted “or a child advocacy center” for “or both”; redesignated the introductory language of (c)(2)(A) as (c)(2)(A)(i) and (ii); inserted “that” near the end of (c)(2)(A)(i); deleted former (c)(2)(A)(v); redesignated the introductory language of (c)(2)(B) as (c)(2)(B)(i) and (ii); and deleted former (c)(2)(B)(v).

The 2017 amendment, in (c)(2)(A)(i) and (c)(2)(B)(i), inserted “and that otherwise should be sealed” and substituted “that have no legitimate interest in the evidence” for “without a legitimate interest in the evidence and that should otherwise be sealed”.

20-78-107. Criminal background checks for employees of private businesses that provide short-term child care for patrons — Definition.

(a) A private business that provides short-term child care for its patrons shall perform a criminal history check with the Department of Arkansas State Police and a Child Maltreatment Central Registry check with the Department of Human Services for every employee that is employed in a capacity that directly or indirectly relates to providing care or supervision of any child.

(b) Employees who have pleaded guilty or nolo contendere to or have been found guilty of an offense for which registration under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., is required shall be prohibited from having any direct or indirect contact with or performing duties that directly or indirectly relate to providing care or supervision of a child who is in short-term child care provided by the private business for its patrons.

(c) As used in this section, “short-term child care” means that:

(1) The child does not receive care for more than:

(A) Five (5) hours per day; or

(B) Ten (10) hours per week;

(2) A parent or guardian is on the premises or is otherwise easily accessible; and

(3) The facility cares for five (5) children or less at one time.

History. Acts 2011, No. 1181, § 1.

SUBCHAPTER 2 — CHILDCARE FACILITY LICENSING ACT

SECTION.

- 20-78-201. Title.
- 20-78-202. Definitions.
- 20-78-203. Penalties.
- 20-78-204. Injunction.
- 20-78-205. Division of Child Care and Early Childhood Education.
- 20-78-206. Division of Child Care and Early Childhood Education — Rules and regulations.
- 20-78-207. Declaratory judgments on licensing rules or regulations.
- 20-78-208. Unlicensed childcare facility unlawful.
- 20-78-209. License — Religious exception — Definitions.
- 20-78-210. License — Application and issuance.
- 20-78-211. License — Provisional.
- 20-78-212. License — Nontransferability.

SECTION.

- 20-78-213. License — Denial, revocation, or suspension.
- 20-78-214. Inspections and investigations of childcare facilities and personnel — Child abuse.
- 20-78-215. Child sexual abuse — Federal funds — Legislative intent.
- 20-78-216. Records and reports.
- 20-78-217. Smoking prohibited — Legislative intent.
- 20-78-218. Administration of subchapter.
- 20-78-219. Fines and penalties — Disposition of funds.
- 20-78-220. Persons or facilities abusing juveniles in their custody.
- 20-78-221. Voluntary registration.
- 20-78-222. Continuing education.
- 20-78-223. License fees — Disposition.
- 20-78-224. Child Care Fund.
- 20-78-225. Child safety alarm devices.

SECTION.

- 20-78-226. Violation.
- 20-78-227. General liability insurance coverage required.
- 20-78-228. Childcare facility floor plan on

file with emergency management coordinator — Definition.

Publisher's Notes. Acts 1987, No. 856, § 2, provided: "This Act shall be liberally construed to assure quality child care to the children of the State of Arkansas and shall be considered cumulatively with respect to any other authority of the Child Care Facility Review Board to regulate child care facilities."

Cross References. Child welfare agency licensing, § 9-28-401 et seq.

Interstate Compact on the Placement of Children, § 9-29-201 et seq.

Tax refunds for construction of employer-operated child care facilities, §§ 26-52-516, 26-53-132.

Title XX Social Security Funds, § 19-7-701 et seq.

Preambles. Acts 1983, No. 245 contained a preamble which read: "Whereas, Section 1 of Act 518 of 1981 now provides that a religious exemption may be obtained by any religious child care facility organized, and operating as of July 1, 1969, and

"Whereas, many religious child care facilities have been organized or started to operate religious child care facilities since July 1, 1969, and

"Whereas, many religious child care facilities are now included within the definition of Child Care Facilities,

"Now, therefore ... "

Acts 1987, No. 745 contained a preamble which read: "Whereas, many persons provide routine care for unrelated children as babysitters or "family day-care" which are exempt from State licensure because they care for children of not more than four (4) families and less than six (6) children; and

"Whereas, the Arkansas Juvenile Code addresses remedies as to parents of a particular dependent-neglected child, but does not extend protection to children not the subject of an individual abuse or neglect complaint; and

"Whereas, it is the intent of the General Assembly to protect such children;

"Now therefore ... "

Effective Dates. Acts 1977, No. 349,

§ 4: Mar. 3, 1977. Emergency clause provided: "It is hereby found and determined by the General Assembly that the existing laws pertaining to license, revocation and suspension by the Child Care Facility Review Board permit the Board to revoke licenses without notice and without a hearing, which procedures are likely violative of the due process laws of the Constitution of the State of Arkansas and of the United States; that this Act is designed to correct this undesirable situation by requiring the Child Care Facility Review Board to comply with the provisions of the Arkansas Administrative Procedure Law, and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1985, No. 862, § 3: Emergency clause failed to pass.

Acts 1985, No. 1050, § 5: Apr. 17, 1985. Emergency clause provided: "It is hereby found and determined by the Seventy-Fifth General Assembly that there is a critical need to address the rising incidence of child sexual abuse through methods and funding made available by the Federal government and that the State of Arkansas should be enabled to participate in such Federal funds by vesting regulatory discretion within the Director of the Department of Human Services to comply with Federal conditions of participation. Therefore, an emergency is hereby declared to exist, and this Act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effect immediately from and after its passage and approval."

Acts 1995, No. 1280, § 20: Apr. 13, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly of the State of Arkansas that the immediate effectiveness of this act is essential to the safety and well-being of Arkansas children who are cared

for in child care facilities. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1997, No. 312, § 24: Feb. 28, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that the duties of the Joint Interim Committee on Children and Youth shall be transferred to the Senate Interim Committee on Children and Youth; that such transfer should begin upon the adjournment of this Regular Session; and that unless this emergency clause is adopted the transfer will not occur until ninety days past the Regular Session. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 1999, No. 1222, § 21: Apr. 8, 1999. Emergency clause provided: "It is hereby

found and determined by the Eighty-second General Assembly, that it is essential to the effective and efficient administration of the Child Care Licensing program that the responsibility for reviewing appeals be placed in the Child Care Appeal Review Panel under the Department of Human Services, as soon as possible and that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval of the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2003, No. 999, § 4 [5]: Apr. 1, 2003. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the federal District Courts for the Eastern and Western Districts of Arkansas have held the state's school immunization statute to be unconstitutional, that the courts have stayed the effect of the finding, that if the stay is lifted before this act becomes effective, some students will be excluded from school attendance. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2005, No. 1979, § 5: Apr. 11, 2005. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that child safety alarm devices need to be installed in vehicles used to transport more than seven (7) passengers and one (1) driver, for programs licensed by the Department of Human Services in order to protect and preserve their health and safety. Therefore, an emergency is declared to exist and this act being immediately necessary for the

preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2009, No. 758, § 29, provided: “Contingent Effectiveness. This act shall not become effective unless an act of the Eighty-Seventh General Assembly repealing the Arkansas Child Maltreatment Act, § 12-12-501 et seq., and enacting a new Child Maltreatment Act, § 12-18-101 et seq., becomes effective.” The contingency in Acts 2009, No. 758, § 29, was met by Acts 2009, No. 749.

Acts 2009, No. 762, § 12: Sept. 1, 2009.

Acts 2009, No. 778, § 4: Apr. 3, 2009. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that the transportation of children is an integral part of child care services and subjects the children to a risk of injury which can be minimalized and insured against; and that this act is immediately necessary to provide protection to children served by various child care centers. Therefore, an emergency is declared to exist and this act being immediately necessary for the pres-

ervation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

Acts 2015, No. 23, § 2: Feb. 6, 2015. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that school districts are statutorily immune from tort liability; that the general liability insurance requirement imposed by rule of the Division of Child Care and Early Childhood Education of the Department of Human Services is burdensome on school districts; and that this act is immediately necessary to ensure that school districts are able to continue offering critical early childhood education programs. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

RESEARCH REFERENCES

ALR. Governmental liability for negligence in licensing, regulating, or supervising

private day-care home in which child is injured. 68 A.L.R.4th 266.

20-78-201. Title.

This subchapter shall be known and cited as the “Childcare Facility Licensing Act”.

History. Acts 1969, No. 434, § 1; A.S.A. 1947, § 83-901.

20-78-202. Definitions.

As used in this subchapter, unless the context otherwise requires: (1)(A) “Child Care Appeal Review Panel” or “panel” means an eleven-member body under the Department of Human Services which shall

serve as a review and appeal body regarding licensure or registration actions.

(B)(i) The panel shall consist of eleven (11) members, including the following:

- (a) Three (3) early childhood professionals;
- (b) One (1) pediatric health professional;
- (c) One (1) parent of a child in a licensed early childhood program;
- (d) The Director of the Division of Child Care and Early Childhood Education of the Department of Human Services or his or her designee who shall serve as Chair of the Child Care Appeal Review Panel and shall not vote; and

(e) Five (5) licensed childcare providers representing a diversity of childcare settings.

(ii) Legal counsel from the office of the Attorney General shall serve as a facilitator of the panel and shall not serve as a voting member.

(iii) Alternates shall be chosen to serve during times of absence or in cases of conflict of interest. Five (5) alternates shall be chosen as follows:

- (a) One (1) early childhood professional;
- (b) One (1) pediatric health professional;
- (c) One (1) parent of a child in a licensed early childhood program; and
- (d) Two (2) licensed childcare providers.

(iv) Members of the panel shall not be members of the Arkansas Early Childhood Commission.

(C)(i) The commission, from applications submitted, shall make panel selections from persons meeting the qualifications for service and exhibiting a willingness and time commitment to serve on the panel.

(ii) Panel members may be replaced under the same guidelines as commission members.

(D)(i) Members of the panel shall serve for three-year terms, not to exceed six (6) consecutive years of service on the panel.

(ii) Members from the office of the Attorney General and the Director of the Division of Child Care and Early Childhood Education of the Department of Human Services shall hold permanent offices.

(E) Members of the panel shall receive no compensation other than normal state reimbursement for travel, meals, and lodging when applicable.

(F) The panel shall schedule monthly meetings and may meet more often as necessary.

(G) A majority of the panel shall constitute a quorum, and a majority of those present may decide any issue before the panel. In the event of a tie vote by the panel, the Division of Child Care and Early Childhood Education decision shall stand.

(H)(i) Decisions of the panel shall be the final administrative appeal.

(ii) Providers or the Division of Child Care and Early Childhood Education may appeal the panel's findings to the circuit court of the licensee's county of residence or to the Pulaski County Circuit Court.

(I) There shall be no monetary liability on the part of and no cause of action for damages shall arise against any member of the panel for any act or proceeding undertaken or performed within the scope of the functions of the panel if the panel member acts without malice or fraud;

(2)(A)(i) "Childcare facility" means any facility which provides care, training, education, or supervision for any unrelated minor child, whether or not the facility is operated for profit and whether or not the facility makes a charge for the services offered by it.

(ii) For the purposes of this subdivision (2), "related minor child" means a minor child related by blood, marriage, or adoption to the owner or operator of the facility or a minor child who is a ward of the owner or operator of the facility pursuant to a guardianship order issued by an Arkansas court of competent jurisdiction.

(B) This definition includes, but is not limited to, a nursery, a nursery school, a kindergarten, a day care center, or a family day care home.

(C) In any case where a facility or the owner or operator thereof is appointed guardian of a total of ten (10) or more minors, it shall be presumed that the facility, owner, or operator is engaged in child care and shall be subject to childcare facility licensure.

(D) However, this definition does not include:

(i) Special schools or classes operated solely for religious instruction;

(ii) Facilities operated in connection with a church, shopping center, business, or establishment where children are cared for during short periods of time while parents or persons in charge of the children are attending church services, shopping, or engaging in other activities during the periods;

(iii) Any educational facility, whether private or public, which operates solely for educational purposes in grades one (1) or above and does not provide any custodial care;

(iv) Kindergartens operated as a part of the public schools of this state;

(v) Any situation, arrangement, or agreement by which one (1) or more persons care for fewer than six (6) children from more than one (1) family at the same time;

(vi) Any educational facility, whether public or private, which operates a kindergarten program in conjunction with grades one (1) and above and provides short-term custodial care before or following classes for those students;

(vii)(a) Any recreational facility or program, whether public or private, which operates solely as a place of recreation for minor children.

(b) For purposes of this subdivision (2), a "recreational facility or program" is defined as a facility or program which operates with

children arriving and leaving voluntarily for scheduled classes, activities, practice, games, and meetings;

(viii) Any state-operated facility to house juvenile delinquents or any serious offender program facility operated by a state designee to house juvenile delinquents, foster home, group home, or custodial institution. Those facilities shall be subject to program requirements modeled on nationally recognized correctional and child welfare standards, which shall be developed, administered, and monitored by the Division of Youth Services of the Department of Human Services; and

(ix) The Arkansas School for Mathematics, Sciences, and the Arts;

(3) "Department" means the Department of Human Services;

(4) "Deputy director" means the Deputy Director of the Division of Child Care and Early Childhood Education of the Department of Human Services; and

(5) "Division" means the Division of Child Care and Early Childhood Education of the Department of Human Services.

History. Acts 1969, No. 434, § 2; 1973, No. 123, § 4; 1983, No. 331, § 1; A.S.A. 1947, § 83-902; Acts 1989, No. 399, § 1; 1991, No. 163, § 1; 1995, No. 1340, § 1; 1997, No. 948, § 2; 1997, No. 1132, § 1; 1999, No. 1222, § 6.

20-78-203. Penalties.

(a)(1) Any person violating any provisions of this subchapter and any person assisting any partnership, group, corporation, organization, or association in violating any provisions of this subchapter shall be guilty of a violation and upon conviction shall be fined in any sum not less than twenty-five dollars (\$25.00) and not more than one hundred dollars (\$100).

(2) Each day of the violation shall constitute a separate offense.

(b)(1) The Division of Child Care and Early Childhood Education of the Department of Human Services is authorized to impose monetary fines as civil penalties to be paid for failure to comply with the provisions of this subchapter or the regulations promulgated pursuant thereto.

(2) In determining whether a civil penalty is to be imposed, the following factors shall be considered by the division:

(A) The gravity of the violation, including the probability that death or serious physical harm to a child will result or has resulted, the severity and scope of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;

(B)(i) The exercise of good faith.

(ii) Indications of good faith include, but are not limited to, awareness of the applicable statutes and regulations and reasonable diligence in securing compliance, prior accomplishments manifesting the desire to comply with the requirements, efforts to correct, and any other mitigating factors in favor of the operator;

(C) Any relevant previous violations committed; and

(D) The financial benefit of committing or continuing the violation.

(c) Before the imposition of monetary fines, the division shall provide notice and an opportunity to be heard before the Child Care Appeal Review Panel in accordance with hearing procedures in effect for the revocation or suspension of licenses.

(d) With the review and approval of the Arkansas Early Childhood Commission, the division shall publish and promulgate rules and regulations classifying violations as follows:

(1)(A)(i) Class A violations involve essential standards that must be met for substantial compliance to licensing requirements.

(ii) These standards address fire, health, safety, nutrition, staff-to-child ratio, and space.

(B)(i) Operation of an unlicensed childcare facility shall be considered a Class A violation.

(ii) However, the definition of unlicensed childcare facility shall not be interpreted to include exempt childcare facilities as defined in § 20-78-209.

(C) Class A violations are subject to a civil penalty of one hundred dollars (\$100) for each violation; and

(2)(A) Class B violations involve administrative standards and standards that do not directly threaten the immediate health, safety, or welfare of the children.

(B) Class B violations are subject to a civil penalty of fifty dollars (\$50.00) for each violation.

(e)(1) Each day of occurrence of a Class A or Class B violation shall constitute a separate violation.

(2) Aggregate fines assessed for violation in any one (1) month shall not exceed five hundred dollars (\$500) for Class A violations or two hundred fifty dollars (\$250) for Class B violations.

(f)(1) When a childcare facility has been found by the division to have committed Class A or Class B violations, then upon final administrative determination by the panel, notice shall be posted in the childcare facility stating the violations found by the division to have occurred and the current status of the license.

(2) This notice shall be posted in the childcare facility in a conspicuous place clearly visible to all staff, to all other individuals in the childcare facility, and to all visitors to the childcare facility.

(g)(1) Failure to post a proper notice as required by this section shall be considered to be a Class B violation for which civil penalties may be imposed as authorized by this section.

(2) Each day of noncompliance shall constitute a separate offense.

History. Acts 1969, No. 434, § 14; § 2; 1999, No. 1222, § 7; 2005, No. 1994, A.S.A. 1947, § 83-914; Acts 1987, No. 856, § 140.
§ 1; 1991, No. 888, § 1; 1997, No. 1132,

20-78-204. Injunction.

When any person, partnership, group, corporation, organization, or association shall operate or assist in the operation of a childcare facility which has not been licensed by the Division of Child Care and Early Childhood Education of the Department of Human Services or has had the license denied, suspended, or revoked and has been ordered to cease and desist operation, in accordance with the provisions of this subchapter, the division shall have the right to go into the circuit court in the jurisdiction in which the childcare facility is being operated and, upon affidavit, secure a writ of injunction, without bond, restraining and prohibiting the person, partnership, group, corporation, organization, or association from operating the childcare facility.

History. Acts 1969, No. 434, § 15; § 2; 1997, No. 1132, § 3; 1999, No. 1222, A.S.A. 1947, § 83-915; Acts 1989, No. 399, § 8.

CASE NOTES

Cited: Jacksonville Christian Academy
v. Ark. Social Servs., 277 Ark. 339, 641
S.W.2d 716 (1982).

20-78-205. Division of Child Care and Early Childhood Education.

(a) There is created the Division of Child Care and Early Childhood Education within the Department of Human Services. In creating the division, the General Assembly intends for the following to be maintained and enhanced:

(1) Coordination of existing early childhood education and childcare programs;

(2) Placement of children in quality early childhood programs which support their development and readiness for school;

(3) Development of new childcare services under welfare reform which promote the developmental needs of children receiving transitional employment assistance benefits or other forms of public assistance;

(4) Quality program standards for all early childhood and childcare programs;

(5) State support for early childhood and childcare programs to attain quality program standards;

(6) Economic and cultural integration of children in early childhood programs;

(7) Access to additional support services for early childhood and childcare programs, such as health care and nutrition services;

(8) Career development opportunities for early childhood program staff;

(9) On-going interagency planning and collaboration in regard to early childhood and child care;

(10) Parent support and education in choosing appropriate early childhood programs for their children; and

(11) State support for local leadership, program innovation, and excellence in early childhood and care programs.

(b) The division shall have the following duties:

(1) Administration of the Child Care and Development Block Grant and other childcare funds, state and federal, that are available to the Department of Human Services;

(2) Administration of the Arkansas Better Chance Program, under interagency agreement with the Department of Education;

(3) Administration of the Arkansas Special Nutrition Program;

(4) Establishment and promulgation of rules setting standards governing the granting, revocation, refusal, and suspension of licenses for a childcare facility and the operation of childcare facilities in this state, as defined by § 20-78-202;

(5) Staff support for the operation of the Arkansas Early Childhood Commission;

(6) Provide consultative resources for the private sector in developing childcare programs;

(7) Provide consultative resources for the private sector in developing childcare facilities;

(8) Solicit grant funds for exemplary early childhood and childcare programs; and

(9) Administration of the birth through prekindergarten teaching credential and the promulgation of rules to implement the teaching credential program under § 20-78-801 et seq.

(c)(1) In addition to any other rights, powers, functions, and duties granted by law to the division, the Department of Human Services is hereby authorized to promote and cooperate in the establishment of a foundation under the Arkansas nonprofit corporation law and to accept support and assistance in the form of money, property, or otherwise from the foundation to be used to enhance quality, affordability, and availability of child care and early education for all children in the state.

(2) If a foundation is established for the early care and education of children and if the Department of Human Services shares resources or facilities with the foundation or accepts support and assistance from the foundation, the foundation shall file annually a report with the Governor, the Legislative Council, and the Legislative Joint Auditing Committee showing the amount and source of all gifts, grants, and donations of money or property received by the foundation and all expenditures or other dispositions of money or property by the foundation during the preceding year.

(3) After consultation with the commission, the Director of the Division of Child Care and Early Childhood Education of the Department of Human Services shall prepare rules for the use of foundation funds. The director shall submit the proposed rules to the Legislative Council for its review.

(4) No person over whom the Department of Human Services has day-to-day managerial control shall receive compensation or remuneration from funds not in the State Treasury.

History. Acts 1969, No. 434, § 12; 1973, No. 123, § 2; 1979, No. 904, § 1; A.S.A. 1947, § 83-911; Acts 1987, No. 856, § 1; 1989, No. 400, §§ 1, 2; 1995, No. 1280, §§ 13, 14; 1997, No. 250, § 205; 1997, No. 1132, § 4; 1999, No. 1222, § 9; 2001, No. 1271, § 1; 2009, No. 187, § 2; 2011, No. 1121, § 15; 2017, No. 576, § 1.

Amendments. The 2017 amendment deleted “to be approved by the Arkansas

Early Childhood Commission” following “rules” in (b)(4).

Cross References. Arkansas Nonprofit Corporation Act, §§ 4-28-201 — 4-28-206 and 4-28-209 — 4-28-224.

Arkansas Nonprofit Corporation Act of 1993, § 4-33-101 et seq.

Department of Human Services, organization, § 25-10-102.

20-78-206. Division of Child Care and Early Childhood Education — Rules and regulations.

(a)(1)(A) The Division of Child Care and Early Childhood Education within the Department of Human Services shall promulgate and publish rules setting minimum standards governing the granting, revocation, refusal, and suspension of licenses for a childcare facility and the operation of a childcare facility.

(B) In developing proposed rules, the division shall consult with the Director of the Department of Health or his or her designated representative in regard to rules relating to health.

(2)(A)(i) However, no childcare facility shall continue to admit a child who has not been age-appropriately immunized from poliomyelitis, diphtheria, tetanus, pertussis, red (rubeola) measles, rubella, and any other diseases as designated by the State Board of Health within fifteen (15) program days after the child’s original admission.

(ii) The immunization shall be evidenced by a certificate of a licensed physician or a public health department acknowledging the immunization. The division shall consult with the Commissioner of Education or his or her designated representative in regard to rules and regulations relating to education.

(B)(i) The provisions of subdivision (a)(2)(A) of this section pertaining to immunizations shall not apply if the parents or legal guardian of that child object thereto on the grounds that immunization conflicts with the religious or philosophical beliefs of the parent or guardian.

(ii) The parents or legal guardian of the child shall complete an annual application process developed in the rules and regulations of the Department of Health for medical, religious, and philosophical exemptions.

(iii) The rules and regulations developed by the Department of Health for medical, religious, and philosophical exemptions shall include, but not be limited to:

(a) A notarized statement requesting a religious, philosophical, or medical exemption from the Department of Health by the parents or legal guardian of the child regarding the objection;

(b) Completion of an educational component developed by the Department of Health that includes information on the risks and benefits of vaccination;

(c) An informed consent from the parents or guardian that shall include a signed statement of refusal to vaccinate based on the Department of Health's refusal-to-vaccinate form; and

(d) A signed statement of understanding that:

(1) At the discretion of the Department of Health, the unimmunized child or individual may be removed from day care or school during an outbreak if the child or individual is not fully vaccinated; and

(2) The child or individual shall not return to school until the outbreak has been resolved and the Department of Health approves the return to school.

(iv) No exemptions may be granted under this subdivision (a)(2)(B) until the application process has been implemented by the Department of Health and completed by the applicant.

(v) Furthermore, the provisions of subdivision (a)(2)(A) of this section requiring pertussis vaccination shall not apply to any child with a sibling, either whole blood or half blood, who has had a serious adverse reaction to the pertussis antigen, which reaction resulted in a total permanent disability.

(3) The director and the commissioner and their designated representatives are directed to cooperate with and assist the division in developing rules and regulations in the respective areas of health and education.

(4) In developing these rules and regulations, the division shall consult with such other agencies, organizations, or individuals as it shall deem appropriate.

(5) Rules promulgated by the division pursuant to this section may be amended by the division from time to time, provided that any amendment to the rules shall be published and furnished to all licensed childcare facilities and to all applicants for a license at least sixty (60) days before the effective date of the amendment.

(b) In establishing requirements and standards for the granting, revocation, refusal, and suspension of a license for a childcare facility, the division shall adopt such rules and regulations as will:

(1) Promote the health, safety, and welfare of children attending a childcare facility;

(2) Promote safe, comfortable, and healthy physical facilities for the children who attend the childcare facility;

(3) Ensure adequate supervision of the children by capable, qualified, and healthy individuals;

(4) Ensure appropriate educational programs and activities; and

(5) Ensure adequate and healthy food service where food service is offered by the childcare facility.

(c)(1) Questions between providers and the division concerning substantial compliance with the published standards, founded licensing

complaints, denials of alternative compliance requests, and adverse actions shall first be appealed through the division's internal appeal process and then may be appealed through the Child Care Appeal Review Panel for determination.

(2) The division shall follow the procedures prescribed for adjudication in the Arkansas Administrative Procedure Act, § 25-15-201 et seq., in exercising any power authorized by § 20-78-213.

(d) If, upon the filing of a petition for a judicial review, the reviewing court enters a stay prohibiting enforcement of a decision of the division, the court shall complete its review of the record and announce its decision within one hundred twenty (120) days of the entry of the stay. If the court does not issue its findings within one hundred twenty (120) days of the issuance of the stay, the stay shall be considered vacated.

(e) All rules and regulations promulgated pursuant to this section shall be reviewed by the Senate Committee on Children and Youth or an appropriate subcommittee thereof and the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs.

(f)(1) Any person with reasonable cause to suspect that a childcare facility has violated any provision of this subchapter or any rule or regulation of the division may immediately notify the Department of Human Services.

(2) The Department of Human Services shall not release data that would identify the person who made the report or who cooperated in a subsequent investigation of a childcare facility unless a court of competent jurisdiction orders the release of information for good cause shown.

(3) Following the inspection and investigation of a childcare facility as provided under this subsection, the Department of Human Services shall, upon request, provide information to the person or agency reporting the suspected violation as to whether an investigation has been conducted.

(4) Willfully making false notification pursuant to this subsection shall be a Class C misdemeanor.

History. Acts 1969, No. 434, § 4; 1977, No. 349, § 2; A.S.A. 1947, §§ 83-904, 83-911.1; Acts 1991, No. 888, §§ 2, 4; 1995, No. 1280, § 15; 1997, No. 312, § 17; 1997, No. 870, § 1; 1997, No. 1132, § 5; 1999, No. 1222, § 10; 2003, No. 999, § 3; 2017, No. 576, §§ 2, 3.

Amendments. The 2017 amendment deleted "and regulations" following "rules"

once in (a)(1)(A), and twice in (a)(1)(B) and (a)(5); substituted "within the Department of Human Services" for "the Department of Human Services, with the approval of the Arkansas Early Childhood Commission" in (a)(1)(A); deleted (a)(1)(C); and deleted "approved by the commission" preceding "at least" in (a)(5).

RESEARCH REFERENCES

U. Ark. Little Rock L. Rev. Survey of Requirements, 26 U. Ark. Little Rock L. Legislation, 2003 Arkansas General Assembly, Education Law, Immunization Rev. 384.

20-78-207. Declaratory judgments on licensing rules or regulations.

Any rule or regulation promulgated by the Division of Child Care and Early Childhood Education of the Department of Human Services under authority of § 20-78-206 or under any other childcare facility licensing law shall, at the suit of any interested person instituted in the Pulaski County Circuit Court, be subject to remedies provided by law for obtaining declaratory judgments. However, the division must be named a party defendant and summoned as in an action by ordinary proceedings.

History. Acts 1971, No. 715, § 1; A.S.A. 1947, § 83-917; Acts 1997, No. 1132, § 6.

20-78-208. Unlicensed childcare facility unlawful.

(a) It shall be unlawful for any person, partnership, group, corporation, organization, or association to operate or assist in the operation of a childcare facility which has not been licensed by the Division of Child Care and Early Childhood Education of the Department of Human Services.

(b) It shall be unlawful for any person to falsify an application for licensure, to knowingly circumvent the authority of this subchapter to knowingly violate the orders issued by the division, or to advertise the provision of child care which is not licensed or approved or exempt by the division.

(c) A violation of this section shall be a Class C misdemeanor.

History. Acts 1969, No. 434, § 3; A.S.A. 1947, § 83-903; Acts 1991, No. 888, § 3; 1997, No. 1132, § 7.

20-78-209. License — Religious exception — Definitions.

(a) Any church or group of churches exempt from the state income tax levied by the Income Tax Act of 1929, § 26-51-101 et seq., when operating a childcare facility shall be exempt from obtaining a license to operate the childcare facility upon the receipt by the Division of Child Care and Early Childhood Education of the Department of Human Services of written request therefor. A written request shall be made by those churches desiring exemption to the division, which is mandated under the authority of this subchapter to license all childcare facilities.

(b)(1) In order to maintain an exempt status, the childcare facility shall maintain in its files verification that its childcare facility has met the required fire, safety, and health inspections on an annual basis and

is in substantial compliance with published standards that similar nonexempt childcare facilities are required to meet.

(2) Visits to review and advise exempt childcare facilities shall be made as deemed necessary by the division to verify and maintain substantial compliance with all published standards for nonexempt childcare facilities.

(3) Standards for substantial compliance shall not include those of a religious or curriculum nature so long as the health, safety, and welfare of the child is not endangered.

(4) Standards for corporal punishment shall be as established by present regulations unless alternative compliance is granted by the division.

(c)(1) Any questions of substantial compliance with the published standards, adverse actions, founded licensing complaints, and denied requests for alternative compliance shall be appealed first through the division's internal appeal process and then may be appealed to the Child Care Appeal Review Panel for determination.

(2) Final administrative actions of the division shall be pursued by either party in the court of competent jurisdiction in the resident county of the childcare facility under review.

(3) Challenge to the constitutionality or reasonableness of any regulation or statute may be made before any appeal under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) As used in this section, the term "substantial compliance" and as used in §§ 20-78-201 — 20-78-206, 20-78-208, 20-78-210 — 20-78-214, and 20-78-218, the term "is being operated in accordance with this act" shall each mean that a church-operated exempt or a nonexempt childcare facility is being operated within the minimum requirements for substantial compliance as promulgated by the division. It is the intent and purpose of this section that the term "substantial compliance" be applicable to all childcare facilities.

(e) This section is cumulative to all other acts heretofore enacted.

History. Acts 1983, No. 245, §§ 1-4, 6; A.S.A. 1947, §§ 83-920 — 83-924; Acts 1991, No. 627, § 1; 1997, No. 1132, § 8; 1999, No. 1222, § 11.

Publisher's Notes. Acts 1983, No. 245 provided, in part, that the act did not

modify or repeal any of the provisions of Acts 1981, No. 518. However, that act was declared unconstitutional in *Arkansas Day Care v. Clinton*, 577 F. Supp. 388 (E.D. Ark. 1983).

CASE NOTES

Constitutionality.

The exemptions in this section are permissible accommodations to religious beliefs and do not constitute the establishment of religion under the test of *Lemon v.*

Kurtzman, 403 U.S. 602, 91 S. Ct. 2105, 29 L. Ed. 2d 745 (1971) or otherwise violate U.S. Const., Amend. 1 or Amend. 14. *Ark. Day Care Ass'n v. Clinton*, 577 F. Supp. 388 (E.D. Ark. 1983).

20-78-210. License — Application and issuance.

(a) Any person, partnership, group, corporation, organization, or association desiring to operate a childcare facility shall first make application for a license for a childcare facility to the Division of Child Care and Early Childhood Education of the Department of Human Services on the application forms furnished for this purpose by the division.

(b) The division shall act on any application within sixty (60) days after it has been received by the division.

(c) If an applicant meets the requirements of this subchapter and the published rules and regulations of the division regarding minimum standards for a childcare facility, then the applicant shall be granted a license by the division as a childcare facility. This license shall continue in effect until revoked or suspended as provided in this subchapter.

(d) In issuing a license for a childcare facility, the division may limit the number of children who may be served by that childcare facility.

(e) In issuing an initial license or reviewing a current license for a childcare facility, the division shall require that during regular business hours at least one (1) adult member of the staff who is certified in infant and child cardiopulmonary resuscitation shall be present within the physical confines of the childcare facility.

History. Acts 1969, No. 434, § 5; A.S.A. 1947, § 83-905; Acts 1991, No. 627, § 2; 1993, No. 493, § 1; 1997, No. 1132, § 9.

CASE NOTES

Cited: McKinley v. Ark. Dep't of Human Servs., 311 Ark. 382, 844 S.W.2d 366 (1993).

20-78-211. License — Provisional.

(a) If the Division of Child Care and Early Childhood Education of the Department of Human Services finds that an applicant for a childcare facility meets the licensing requirements for a childcare facility in the main and has a reasonable expectation of correcting deficiencies in a reasonable time, then the division may, in its discretion, issue a provisional license for a childcare facility.

(b) The provisional license shall be in effect for a reasonable time, which time shall be specified in the provisional license.

(c) Issuance of provisional licenses shall be in accordance with the published rules and regulations adopted by the division in accordance with this subchapter.

History. Acts 1969, No. 434, § 6; A.S.A. 1947, § 83-906; Acts 1997, No. 1132, § 10.

20-78-212. License — Nontransferability.

(a) A license for a childcare facility shall apply only to the address and location stated on the application and license issued, and it shall not be transferable from one holder of the license to another or from one (1) place to another.

(b) If the location of a childcare facility is changed or the owner of the childcare facility is changed, then the license for that childcare facility shall automatically be revoked upon such a change.

History. Acts 1969, No. 434, § 7; A.S.A. 1947, § 83-907; Acts 1997, No. 1132, § 11.

20-78-213. License — Denial, revocation, or suspension.

(a) The Division of Child Care and Early Childhood Education of the Department of Human Services shall have the power to deny, revoke, or suspend a license for a childcare facility if an applicant or licensee has failed to comply with the provisions of this subchapter or any published rule or regulation of the division, subject to appeal before the Child Care Appeal Review Panel.

(b) If a license is denied, revoked, or suspended, the denial, revocation, or suspension shall be effective when made. The division shall notify the applicant or licensee of the action in writing and set out the basis for the denial, revocation, or suspension of the license.

History. Acts 1969, No. 434, § 10; A.S.A. 1947, § 83-910; Acts 1997, No. 1132, § 12; 1999, No. 1222, § 12.

CASE NOTES**Revocation of License.**

Where there was substantial evidence to support findings by the Child Care Facility Board that physical punishment was used on children under three years, child records were not maintained, nutritious meals and snacks were not served, a safe outdoor play area was not provided,

adequate and approved sleeping arrangements were not provided, towels for hand washing were not provided, and no emergency drills were performed, revocation of child care facility's license was upheld. *McKinley v. Ark. Dep't of Human Servs.*, 311 Ark. 382, 844 S.W.2d 366 (1993).

20-78-214. Inspections and investigations of childcare facilities and personnel — Child abuse.

(a) The Division of Child Care and Early Childhood Education of the Department of Human Services or any other agency of the State of Arkansas which the division asks to assist it is authorized to make an inspection and investigation of any proposed or operating childcare facility and of any personnel connected with that childcare facility to the extent that an inspection and investigation is required to determine whether this childcare facility will be or is being operated in accordance

with this section and with the published rules and regulations of the division for childcare facilities.

(b) However, the division or any other public agency having authority or responsibility with respect to child abuse shall have the authority to investigate any alleged or suspected child abuse in any childcare facility. Nothing contained in this section shall be construed to limit or restrict that authority.

History. Acts 1985, No. 697, § 1; A.S.A. 1947, § 83-908.1; Acts 1997, No. 1132, § 13.

20-78-215. Child sexual abuse — Federal funds — Legislative intent.

(a)(1) By the enactment of this section, it is the specific intent of the General Assembly to ensure that the State of Arkansas may qualify for the maximum amount of federal funds made available through Pub. L. No. 98-473 or any subsequent and related federal legislation enacted for use in reducing the incidence of child sexual abuse.

(2) Specifically, regulations promulgated by the Director of the Department of Human Services pursuant to this section may address federally mandated requirements for employment history and background checks and nationwide criminal record checks, as may be necessary in accordance with the provisions of Pub. L. No. 92-544, for all operators, staff, or employees, or prospective operators, staff, or employees of the childcare facilities or programs as defined in this section.

(b) In order to enable the State of Arkansas to fully participate and share in federal funds made available to the states through the Social Services Block Grant Act, or otherwise for the purposes of reducing and eliminating the incidence of child sexual abuse in childcare facilities, as defined in § 20-78-202(2), the director is authorized at his or her discretion to promulgate, pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., rules and regulations implementing such federal requirements as may be placed upon the states to qualify for the funds.

(c) Persons, other than the State of Arkansas, shall not acquire actionable right by virtue of this section.

History. Acts 1985, No. 1050, §§ 1-3; A.S.A. 1947, §§ 83-927 — 83-929; Acts 1997, No. 1132, § 14.

U.S. Code. Pub. L. No. 98-473 referred to in this section is codified throughout U.S.C. titles 5, 10, 18, 19, 21, 22, 25, 28, 42, and 48.

Pub. L. No. 92-544 is codified throughout U.S.C. titles 22, 28, 36, 42, and 50.

The Social Services Block Grant Act, referred to in this section, is codified as 42 U.S.C. §§ 303, 602, 603, 607, 671, 1301, 1305n, 1308, 1315, 1316, 1320a-3, 1320a-5, 1320a-7, 1353, 1381n, 1382e, 1382h, 1382i, 1397, 1397a-1397f.

Cross References. Reporting suspected child maltreatment, § 12-18-401 et seq.

20-78-216. Records and reports.

The Division of Child Care and Early Childhood Education of the Department of Human Services may by published rules and regulations require that a licensed childcare facility keep and make available to the division records and periodic reports as shall be necessary to assist the division in determining whether the requirements of this subchapter and of the division's rules and regulations regarding childcare facilities are being complied with.

History. Acts 1969, No. 434, § 9; A.S.A. 1947, § 83-909; Acts 1997, No. 1132, § 15.

20-78-217. Smoking prohibited — Legislative intent.

(a) Whereas, health authorities have established that smoking is not conducive to good health and that children exposed to smoking face a potential health hazard, therefore, it is the intent of the Seventy-Fifth General Assembly to ban smoking in the physical confines of the day care centers licensed by the Division of Child Care and Early Childhood Education of the Department of Human Services.

(b) The division is directed to promulgate sufficient regulations to ensure that state licensing requirements for day care center operations contain a stipulation which bans smoking within the physical confines of each day care center.

History. Acts 1985, No. 862, §§ 1, 2; A.S.A. 1947, §§ 83-925, 83-926; Acts 1997, No. 1132, § 16. tion from Secondhand Smoke for Children Act of 2006, § 20-27-1901 et seq. Public smoking, § 20-27-704 et seq.

Cross References. Arkansas Protec-

20-78-218. Administration of subchapter.

The Division of Child Care and Early Childhood Education of the Department of Human Services shall continue to be the administrative agency to administer the provisions of this subchapter in accordance with the rules, regulations, and standards for the licensing and operation of childcare facilities as promulgated by the division.

History. Acts 1987, No. 856, § 1; 1997, No. 1132, § 17.

20-78-219. Fines and penalties — Disposition of funds.

(a) If any licensee fails to pay any monetary fine imposed as a civil penalty within sixty (60) days of the Division of Child Care and Early Childhood Education of the Department of Human Services' decision imposing the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action.

(b)(1) All fines and penalties collected under the provisions of this subchapter shall be special revenues to be deposited into the State Treasury to the credit of a special fund to be known as the "Child Care

Fund”, to be used by the division to meet the costs of conducting the statewide criminal records checks required under § 20-78-606 or to provide grants to childcare facilities for enhancement of the childcare facility or for training of personnel in childcare facilities under the direction of the division.

(2) Subject to those rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the Department of Human Services is authorized to transfer all unexpended funds relative to the fines and penalties collected from childcare facilities as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

History. Acts 1987, No. 856, § 1; 1997, No. 1132, § 18; 2009, No. 762, § 9.

20-78-220. Persons or facilities abusing juveniles in their custody.

(a) If a juvenile is found to be abused or neglected due to the acts or omissions of a person other than the parent or guardian of the juvenile, the court may enter an order restraining or enjoining the person or facility employing that person from providing care, training, education, or supervision of juveniles of whom the person or facility is not the parent or guardian.

(b) If the person or facility restrained or enjoined was not subject to this subchapter, the court may order the person or facility to obtain a license from the Division of Child Care and Early Childhood Education of the Department of Human Services as a condition precedent to the person or facility providing care, training, education, or supervision of any juveniles of which the person or facility is not the parent or guardian. If the court so orders, this subchapter shall thereafter apply to the persons or facility subject to the court order.

(c)(1) Information pertaining to child maltreatment is confidential under the Child Maltreatment Act, § 12-18-101 et seq.

(2) The division may receive information from any investigative agency on child maltreatment cases conducted within a childcare facility and relative to licensure under this subchapter, including specific allegations, a factual description of the investigative findings, and the investigative determination.

(3) The division shall accept the investigative determinations of the appropriate investigative agencies for consideration in any action on childcare facility licenses.

History. Acts 1987, No. 745, § 1; 1995, No. 1280, § 16; 1997, No. 1132, § 19; 2009, No. 758, § 28.

Cross References. Juvenile courts and proceedings, § 9-27-301 et seq.

20-78-221. Voluntary registration.

(a) **REGISTRY.** There shall be created a voluntary registry of day care family homes that are not required by this subchapter to be licensed by the Division of Child Care and Early Childhood Education of the Department of Human Services. The registry shall be maintained by the division.

(b) **PROCEDURE FOR REGISTRATION.** Day care family homes exempt from licensure may voluntarily register the home with the registry established, operated, and maintained by the division. A person wishing to participate in the voluntary registry shall make an application to the division. Upon receipt of the application, the division shall review the applicant's written application, qualifications, and proposed operation to determine compliance with registry rules and regulations. The division shall issue a certificate of registration to the applicant which authorizes the applicant to operate a registered day care family home only upon final determination of an applicant's compliance with the rules and regulations established for registration.

(c) **RULES AND REGULATIONS.**

(1) The division is authorized to establish rules and regulations that a day care family home shall meet in order to be registered by the Department of Human Services.

(2) The division shall have the right to enter and inspect a registered day care family home if there is reason to believe that the home is in violation of the registry rules and regulations and to ensure compliance with the rules and regulations established by the division.

(d) **REMOVAL OR DENIAL OF REGISTRATION.** If after review of the submitted application, it is determined that the day care family home is not in compliance with the rules and regulations for the registry as established by the division, the division shall immediately deny or remove the home from the registry. Upon removal from the registry, a day care family home may no longer be considered a registered home.

(e) **RIGHT TO APPEAL.**

(1) A person whose registration has been denied or who is removed from the voluntary registry due to violation of rules and regulations may appeal the action to the department in accordance with Arkansas law and state rules and regulations.

(2) The appeal does not stay the denial or removal from the registry.

(f) **RENEWAL OF REGISTRATION.**

(1) The registration of the day care family home shall continue in effect until removed as provided in this subchapter.

(2) The division shall have the right to investigate and inspect the premises when there is reason to believe that violations exist and to make sure that the home is still in compliance with the rules and regulations established for the voluntary registry of day care family homes.

(g) **SURRENDER OF REGISTRATION.** At any time, the owner of the registered day care family home may voluntarily surrender his or her

certificate of registration. Upon surrender, that home shall be removed from the registry of day care family homes operated by the division.

History. Acts 1989, No. 46, § 1; 1997, No. 1132, § 20.

20-78-222. Continuing education.

(a)(1) All persons employed by a childcare facility who work directly with children shall receive at least ten (10) hours per year of continuing early childhood education as approved by the Division of Child Care and Early Childhood Education of the Department of Human Services.

(2) Topics appropriate for continuing early childhood education shall include, but not be limited to, the following:

- (A) Child growth and development;
- (B) Nutrition and food service;
- (C) Parental communication and involvement;
- (D) Curricula and curriculum development;
- (E) Developmentally appropriate practice and learning environments;
- (F) Behavior management;
- (G) Emergency care and first aid; and
- (H) Administration and management of early childhood programs.

(b) Evidence satisfactory to the division of each employee's completion within the past twelve (12) months of continuing education shall be maintained by the childcare facility as part of the childcare facility's personnel records.

(c) The failure of a childcare facility to comply with this requirement shall be grounds for the denial, revocation, or suspension of a license issued pursuant to this subchapter.

History. Acts 1993, No. 900, § 1; 1995, No. 594, § 1; 1997, No. 1132, § 21.

20-78-223. License fees — Disposition.

(a) The Division of Child Care and Early Childhood Education of the Department of Human Services shall not issue or maintain a license to a childcare facility unless the license fee is paid at the annual licensing or renewal date. The license fee is:

- (1) Fifteen dollars (\$15.00) per year for childcare facilities serving fewer than seventeen (17) children;
- (2) Fifty dollars (\$50.00) for childcare facilities serving seventeen (17) to ninety-nine (99) children; and
- (3) One hundred dollars (\$100) per year for childcare facilities serving one hundred (100) or more children.

(b) The division shall transmit the fees monthly to the Treasurer of State to be deposited as special revenues into the Child Care Fund.

History. Acts 1997, No. 1132, § 22.

20-78-224. Child Care Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State, the Child Care Fund, to be administered by the Division of Child Care and Early Childhood Education of the Department of Human Services.

(b) The division shall certify each month the amount of fees collected and deposited to the fund and shall transmit, from funds appropriated for the maintenance and operation of the division, an amount of money equal to one-half (½) of the fees transmitted to the Treasurer of State.

History. Acts 1997, No. 1132, § 22.

20-78-225. Child safety alarm devices.

(a) All agencies or childcare facilities licensed by the Department of Human Services under this subchapter or the Child Welfare Agency Licensing Act, § 9-28-401 et seq., that transport children shall have approved child safety alarm devices installed on any vehicles designed or used to transport more than seven (7) passengers and one (1) driver.

(b)(1) All such vehicles in active child transportation service before July 1, 2005, shall have a child safety alarm device installed by a qualified technician or mechanic no later than December 31, 2005.

(2) On or after July 1, 2005, each newly acquired vehicle placed in child transportation service shall have a child safety alarm installed before placing the vehicle into service.

(3) Any agencies or childcare facilities required to have approved child safety alarm devices installed in a vehicle shall ensure that the devices are maintained and are in proper working order any time that the vehicle is in use for transporting children.

(c) The department shall:

(1) Maintain a list of approved child safety alarm devices; and

(2) Promulgate rules as necessary for the proper implementation of this section.

(d) Contingent upon the availability of funding for this purpose, the department may provide reimbursement to agencies or childcare facilities required under this section to retrofit vehicles in service before July 1, 2005, but the requirement to have approved child safety alarm devices in vehicles as required under this section shall not be contingent on the availability of funding or upon an agency's or a childcare facility's eligibility for reimbursement.

History. Acts 2005, No. 1979, § 3.

20-78-226. Violation.

(a) It shall be unlawful to transport children in a vehicle that is required to have an approved child safety alarm device as provided under § 20-78-225 if the approved child safety alarm device:

(1) Has not been installed;

(2) Is not in proper working condition; or

(3) Has been disconnected.

(b) Any person who knowingly violates the provisions of this section shall be guilty of a Class A misdemeanor.

History. Acts 2005, No. 1979, § 4.

20-78-227. General liability insurance coverage required.

(a) The purpose of this section is to enhance safe and responsible passenger transportation of children in child care by requiring appropriate liability insurance and driver training.

(b)(1) The Division of Child Care and Early Childhood Education of the Department of Human Services, in collaboration with the State Insurance Department, shall develop and promulgate rules requiring sufficient and appropriate minimum levels of general liability insurance coverage for licensed childcare centers and licensed and registered childcare family homes, including coverage for transportation services when applicable.

(2) A state institution, political subdivision, or other entity that is entitled to immunity from liability under § 21-9-301 is not required to have general liability insurance coverage in order to be licensed.

(c) The division shall promulgate rules requiring all drivers of vehicles transporting children on behalf of licensed childcare centers and licensed and registered childcare family homes to complete a comprehensive program of driver safety training.

History. Acts 2009, No. 778, §§ 1, 2; 2015, No. 23, § 1.

Amendments. The 2015 amendment redesignated (b) as (b)(1); in (b)(1), deleted

“is directed” following “Services” and substituted “shall” for “to” following “Department”; and added (b)(2).

CASE NOTES

Sovereign Immunity.

Motion to dismiss on sovereign-immunity grounds filed by the Arkansas Department of Human Services (DHS) and its director as to declaratory relief sought against DHS and the director in his official capacity was properly denied under § 25-15-207, which waives sovereign im-

munity when a declaratory judgment is sought regarding the validity or applicability of an agency rule; the statute allowed school districts to challenge a rule requiring licensed childcare centers to have general liability insurance. *Ark. Dep’t of Human Servs. v. Fort Smith Sch. Dist.*, 2015 Ark. 81, 455 S.W.3d 294 (2015).

20-78-228. Childcare facility floor plan on file with emergency management coordinator — Definition.

(a)(1) As used in this section, “floor plan” means a document containing:

(A) A schematic drawing of facilities and property used by the childcare facility, including the configuration of rooms, spaces, and other physical features of buildings;

(B) The location or locations where children enrolled in child care spend time regularly;

(C) The escape routes approved by the local fire department for the childcare facility or faculties;

(D) The ages of children served by the childcare facility;

(E) The licensed capacity of children enrolled in the childcare facility; and

(F) The contact information for at least two (2) emergency contacts for the childcare facility.

(2) An aerial view of the childcare facility and property used by the childcare facility shall be included with the floor plan if available.

(b) A childcare facility licensed by the Division of Child Care and Early Childhood Education of the Department of Human Services under this subchapter or the Child Welfare Agency Licensing Act, § 9-28-401 et seq., shall file a copy of the childcare facility's floor plan with the emergency management coordinator through the statewide Smart911 system for the local office of emergency management or the inter-jurisdictional office of emergency management that serves the area where the childcare facility is located within:

(1) Thirty (30) days of receiving a license; and

(2) Thirty (30) days of a change or modification to the floor plan.

(c) The emergency management coordinator shall ensure that the childcare facility's floor plan submitted under subsection (b) of this section is available at the 911 public safety communications center and the local office of emergency management or the interjurisdictional office of emergency management that serves the area where the childcare facility is located.

(d) The Department of Human Services shall adopt rules as necessary to implement this section.

History. Acts 2013, No. 1159, § 2; 2015, No. 950, § 2.

A.C.R.C. Notes. The use of the term "faculties" in (a)(1)(C) is unclear in context. It is possible that "facilities" was the intended term.

Amendments. The 2015 amendment, in (b), deleted "No later than January 1, 2014" at the beginning and inserted "through the statewide Smart911 system".

SUBCHAPTER 3 — AGREEMENTS WITH ADJOINING STATES

SECTION.

20-78-301. Purpose.

20-78-302. Authority to enter agreements.

SECTION.

20-78-303. Requirements of agreements.

20-78-304. Attorney General approval.

20-78-305. Status of agreements.

Publisher's Notes. Former subchapter 3, concerning the Arkansas Child Sexual Abuse Commission, was repealed by Acts 1991, Nos. 727 and 828, § 5. The former subchapter was derived from the following sources:

20-78-301. Acts 1985, No. 735, § 1; A.S.A. 1947, § 41-4211.

20-78-302. Acts 1985, No. 735, §§ 1, 4; A.S.A. 1947, §§ 41-4211, 41-4214.

20-78-303. Acts 1985, No. 735, § 6; A.S.A. 1947, § 41-4216.

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| 20-78-304. Acts 1985, No. 735, § 1;
A.S.A. 1947, § 41-4211. | 20-78-307. Acts 1985, No. 735, § 5;
A.S.A. 1947, § 41-4215. |
| 20-78-305. Acts 1985, No. 735, § 2;
A.S.A. 1947, § 41-4212. | 20-78-308. Acts 1985, No. 735, § 7;
A.S.A. 1947, § 41-4217. |
| 20-78-306. Acts 1985, No. 735, § 3;
A.S.A. 1947, § 41-4213. | 20-78-309. Acts 1985, No. 735, § 8;
A.S.A. 1947, § 41-4218. |

20-78-301. Purpose.

It is the purpose of this subchapter to permit the Division of Children and Family Services of the Department of Human Services to cooperate with public agencies or private nonprofit organizations of adjoining states to provide services for residents of Arkansas that are in need of regular or therapeutic child care.

History. Acts 1997, No. 939, § 1.

20-78-302. Authority to enter agreements.

Subject to the conditions and limitations contained in this subchapter, the Division of Children and Family Services of the Department of Human Services may enter into agreements with public agencies, private nonprofit organizations, or combinations thereof from adjoining states for the purpose of performing the responsibility to the residents of Arkansas that are in need of regular or therapeutic child care. This includes financial participation, using any funds that are at the division's disposal, to the extent that similar services would be performed within the state.

History. Acts 1997, No. 939, § 2.

20-78-303. Requirements of agreements.

Every agreement or contract entered into in accordance with this subchapter shall specify the following:

- (1) Full names and addresses of all parties to the agreement;
- (2) The precise organization, composition, and nature of the legal or the administrative entity that will be providing services together with its powers and limitations and the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;
- (3) A description of the joint or cooperative undertaking that specifies the duties and responsibilities of all parties to the agreement;
- (4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget thereof, or in the case whereby one of the participants agrees to furnish specified services, the financial arrangements therefor;
- (5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such a partial or complete termination; and

(6) Any other necessary and proper methods.

History. Acts 1997, No. 939, § 3.

20-78-304. Attorney General approval.

Every agreement made hereunder shall, before and as a condition precedent to its entry into force, may at the discretion of the Division of Children and Family Services of the Department of Human Services, be submitted to the Attorney General, who shall determine whether the agreement is in proper form and compatible with the laws of this state. The Attorney General shall approve any agreement submitted to him or her hereunder unless he or she shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the division and the governing bodies concerned with the agreement the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within twenty (20) days of its submission shall constitute approval thereof.

History. Acts 1997, No. 939, § 4.

20-78-305. Status of agreements.

Every agreement or contract entered into pursuant to this subchapter shall have the status of an interstate compact.

History. Acts 1997, No. 939, § 5.

SUBCHAPTER 4 — CHILD CARE PROVIDERS' TRAINING COMMITTEE

SECTION.

20-78-401 — 20-78-406. [Repealed.]

20-78-401 — 20-78-406. [Repealed.]

Publisher's Notes. This subchapter, concerning the Child Care Providers' Committee, was repealed by Acts 1997, No. 1132, § 23. The subchapter was derived from the following sources:

20-78-401. Acts 1987, No. 588, §§ 1, 2; 1995, No. 1280, § 1; 1997, No. 250, § 206.

20-78-402. Acts 1987, No. 588, § 5; 1995, No. 1280, § 2.

20-78-403. Acts 1987, No. 588, § 4; 1995, No. 1280, § 3.

20-78-404. Acts 1987, No. 588, §§ 3, 4; 1995, No. 1280, § 4.

20-78-405. Acts 1987, No. 588, § 6; 1995, No. 1280, § 5.

20-78-406. Acts 1987, No. 588, § 7; 1995, No. 1280, § 6.

For current law, see § 20-78-201 et seq. and § 20-78-501 et seq.

Pursuant to § 1-2-207, the amendment to § 20-78-401 by Acts 1997, No. 250 was deemed superseded by the repeal of this subchapter by Acts 1997, No. 1132.

SUBCHAPTER 5 — EARLY CHILDHOOD COMMISSION

SECTION.

- 20-78-501. Creation — Composition — Meetings.
- 20-78-502. Duties — Assistance.
- 20-78-503. Arkansas Child Care Facilities Loan Guarantee Trust Fund.

SECTION.

- 20-78-504. Moneys for Arkansas Child Care Facilities Loan Guarantee Trust Fund.
- 20-78-505. Loan guarantees — Annual report.
- 20-78-506. Criteria for grant approval.

Effective Dates. Acts 1989, No. 202, § 4: July 1, 1989. Emergency clause provided: “It is hereby found and determined by the General Assembly that expanded development and coordination of early childhood programs is essential to meeting the developmental and educational needs at young children in Arkansas. Therefore, an emergency is hereby declared and this Act being necessary for the immediate preservation of the public peace, health, and safety shall be in full force and effect of July 1, 1989.”

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: “It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved

nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

Acts 1999, No. 1222, § 21: Apr. 8, 1999. Emergency clause provided: “It is hereby found and determined by the Eighty-second General Assembly, that it is essential to the effective and efficient administration of the Child Care Licensing program that the responsibility for reviewing appeals be placed in the Child Care Appeal Review Panel under the Department of Human Services, as soon as possible and that this act is designed to accomplish this purpose and should be given effect immediately. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval of the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.”

20-78-501. Creation — Composition — Meetings.

(a)(1) There is hereby established the Arkansas Early Childhood Commission, to be composed of eleven (11) members.

(2) The Chair of the Arkansas Early Childhood Commission shall be selected annually by majority vote of the commission.

(b) The following members of the commission shall be appointed by the Governor, subject to confirmation by the Senate:

(1) One (1) member affiliated with childcare provider agencies, organizations, or programs;

(2) One (1) member affiliated with the Arkansas Head Start State Collaboration Office;

(3) One (1) member affiliated with a Home Instruction for Parents of Preschool Youngsters program;

(4) One (1) member employed as an administrator by a public school district;

(5) One (1) member who is a parent of a child who attends a childcare program;

(6) One (1) member who is a clinical provider of childhood behavioral and mental health services specializing in prevention and early intervention; and

(7) One (1) member representing the Arkansas Association of Colleges for Teacher Education Council of Deans.

(c) The members identified in subsection (b) of this section shall serve three-year terms.

(d) The remaining membership shall consist of:

(1) The Chair of the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs or his or her designee;

(2) The Chair of the Senate Committee on Children and Youth or his or her designee;

(3) The Chair of the House Committee on Education or his or her designee; and

(4) The Chair of the Senate Committee on Education or his or her designee.

(e)(1) The commission shall meet at least quarterly and at such other times as may be deemed necessary for the performance of the duties of the commission.

(2) Special meetings of the commission may be called by the Chair of the Arkansas Early Childhood Commission or by agreement of a majority of the members of the commission.

(f)(1) The members of the commission shall serve without compensation or per diem but shall be entitled to reimbursement for actual expenses incurred in the performance of duties as members of the commission. Expense reimbursement shall be in accordance with state travel and official business expense reimbursement procedures and regulations.

(2) Expense reimbursement shall be paid from funds appropriated to the Division of Child Care and Early Childhood Education of the Department of Human Services for this purpose.

(g) The commission shall report annually to the House Committee on Education and the Senate Committee on Education as set out in § 20-78-502.

History. Acts 1989, No. 202, § 1; 1997, No. 250, § 207; 1997 No. 1132, § 24; 1999, No. 324, § 1; 1999, No. 1560, § 1; 2001, No. 1288, § 18; 2009, No. 28, § 2; 2011, No. 1121, § 16; 2013, No. 403, § 2; 2017, No. 540, § 50.
A.C.R.C. Notes. Acts 1999, No. 324, § 1 also provided in part: "Members of the

commission serving on the effective date of this act, except those members whose positions have been eliminated by this act, shall continue to serve out their terms.”

Publisher’s Notes. Acts 1989, No. 202, § 1, provided, in part, that, in making the initial appointments to the commission, the Governor shall designate five (5) members to serve one-year terms, seven (7) members to serve two-year terms, and five (5) members to serve three terms and that the Governor shall designate one (1) of the initial members as chair of the commission, to serve a one-year term.

Acts 1989, No. 202, § 1, as enacted, provided, in (a): “Effective July 1, 1990, the chairman of the commission shall be

elected annually by majority vote of the commission.”

Amendments. The 2013 amendment substituted “twenty-five (25) members” for “twenty-four (24) members” in (a)(1); and added (b)(15).

The 2017 amendment substituted “eleven (11)” for “twenty-five (25)” in (a)(1); in (b)(1), substituted “One (1) member” for “Three (3) members” and deleted “of which one (1) of the members shall be affiliated with a family child care home” at the end; deleted former (a)(3) through (a)(5), (a)(8), (a)(9), (a)(11) through (a)(13) and redesignated the remaining subdivisions accordingly; deleted “and the terms shall begin on July 1” at the end of (c); and deleted (d)(5) through (d)(7).

20-78-502. Duties — Assistance.

(a) The Arkansas Early Childhood Commission shall have the following duties and responsibilities and shall annually report its progress toward the following:

(1) Advising the Division of Child Care and Early Childhood Education of the Department of Human Services on the administration of the Arkansas Child Care Facilities Loan Guarantee Trust Fund;

(2) Providing technical assistance in the design of training programs to enhance the skills of professionals in early childhood programs, including the development of an annual comprehensive training plan for providers;

(3) Examining the recommendations of national and regional groups and systems producing scientifically proven and cost-effective results used by others to provide child care and early childhood services;

(4) Assisting in the development of a comprehensive long-range plan for the expansion, development, and implementation of early childhood programs in Arkansas, including recommending the allocation and expenditures of funds appropriated to the Arkansas Better Chance Program;

(5) Facilitating coordination and communication among state agencies providing early childhood programs in order to promote nonduplication and coordination of services in the programs and recommending a structure for the administration of the currently existing programs and the recommended programs;

(6) Advising the Department of Education and other appropriate state agencies on the development of programmatic standards for early childhood programs to be funded with funds appropriated to the department or to such other state agencies as may receive appropriations for such purposes;

(7) Promoting strong local community support for early childhood education programs;

(8) Promoting public awareness of child care and early childhood programs; and

(9) From the applications submitted, making Child Care Appeal Review Panel selections from persons who meet the qualifications for service and who exhibit a willingness and time commitment to serve on the panel.

(b) The division shall assist the commission in carrying out its duties and responsibilities.

History. Acts 1989, No. 202, § 1; 1997, No. 1132, § 25; 1999, No. 324, § 2; 1999, No. 1222, § 13; 2017, No. 576, § 4.

A.C.R.C. Notes. Acts 1997, No. 1132, § 41, provided: "That part of the General Education Division of the Department of Education pertaining to operations of the Early Childhood Commission, including only the two percent (2%) administrative

component of the Better Chance Program, is hereby transferred by a Type 2 transfer as provided in § 25-2-105 to the Department of Human Services, Division of Child Care and Early Childhood Education."

Amendments. The 2017 amendment repealed (a)(10).

20-78-503. Arkansas Child Care Facilities Loan Guarantee Trust Fund.

(a) There is established a cash fund account of the Division of Child Care and Early Childhood Education of the Department of Human Services to be known as the "Arkansas Child Care Facilities Loan Guarantee Trust Fund". This cash fund account is to be maintained in one (1) or more financial institutions of the state and shall be administered in accordance with this subchapter.

(b) The division is hereby authorized to accept moneys for the fund from any source, including, but not limited to, allocations from the Treasurer of State as provided in § 20-78-504.

(c) The fund shall be a continuing fund, not subject to fiscal year limitations, and shall be used to guarantee loans for the expansion or development of childcare facilities in this state and as provided in subsection (d) of this section.

(d) Any interest at the end of the fiscal year which exceeds the amount necessary to cover loan defaults occurring during that fiscal year shall be made available for professional development and quality improvement activities and grants, including without limitation to support an early childhood foundation or public-private partnership.

(e) The fund shall be administered by the division with technical assistance from the Arkansas Early Childhood Commission and the Arkansas Development Finance Authority.

History. Acts 1989, No. 202, § 1; 1997, No. 540, § 43; 1997, No. 1132, § 26; 2001, No. 305, § 1; 2011, No. 636, § 1.

A.C.R.C. Notes. Pursuant to § 1-2-207, this section is set out above as

amended by Acts 1997, No. 1132. The 1997 amendment by No. 540 substituted "Arkansas Economic Development Commission" for "Arkansas Industrial Development Commission" in former (e).

20-78-504. Moneys for Arkansas Child Care Facilities Loan Guarantee Trust Fund.

(a)(1) After providing for the exclusion of the interest income classified as special revenues as authorized by §§ 15-41-110 and 27-70-204, and for the first two million dollars (\$2,000,000) of interest income received each fiscal year by the Treasurer of State as authorized in § 15-5-422, the next one hundred thousand dollars (\$100,000) of interest income received each fiscal year in the State Treasury beginning with the fiscal year commencing July 1, 1989, and continuing as set forth in subsection (b) of this section from the investment of state funds as authorized by the State Treasury Management Law, § 19-3-501 et seq., is declared to constitute cash funds restricted in their use and dedicated to be used solely as authorized in § 20-78-503.

(2) The cash funds as received by the Treasurer of State shall not be deposited into or deemed to be a part of the State Treasury for purposes of Arkansas Constitution, Article 5, § 29; Arkansas Constitution, Article 16, § 12; Arkansas Constitution, Amendment 20; or any other constitutional or statutory provision. The Treasurer of State shall pay the cash funds to the Division of Child Care and Early Childhood Education of the Department of Human Services for depositing those amounts into the Arkansas Child Care Facilities Loan Guarantee Trust Fund for the purposes authorized by § 20-78-503.

(3) The interest earnings transferred directly to the division are declared to be cash funds restricted in their use and dedicated to be used solely as authorized in § 20-78-503.

(b) The Treasurer of State shall continue to pay the cash funds as authorized in subsection (a) of this section until the balance of the fund reaches three hundred fifty thousand dollars (\$350,000). After that time, the division shall review the fund balance at least quarterly and report to the Treasurer of State when the balance reaches or falls below one hundred thousand dollars (\$100,000). At that time, the Treasurer of State shall again pay cash funds as authorized in subsection (a) of this section until the balance of the fund reaches three hundred fifty thousand dollars (\$350,000).

History. Acts 1989, No. 202, § 1; 1997, No. 1132, § 27.

20-78-505. Loan guarantees — Annual report.

(a) The Division of Child Care and Early Childhood Education of the Department of Human Services is authorized to develop and implement, with the technical assistance of the Arkansas Early Childhood Commission, necessary rules and regulations to receive, review, and approve applications for loan deficiency guarantee assistance for expansion or development of childcare facilities in this state.

(b) The maximum loan guarantee amount approved by the division shall be modified as necessary to ensure adequate childcare financing availability.

(c) In guaranteeing loans under this subchapter, consideration shall be given to:

- (1) Geographic distribution;
- (2) Community need;
- (3) Community income, with priority given to those communities with the lowest median family income;
- (4) Proof of viable administrative and financial management; and
- (5) Intended licensure of the facility.

(d) The division shall report each October to the Legislative Council on the status of the Arkansas Child Care Facilities Loan Guarantee Trust Fund.

History. Acts 1989, No. 202, § 1; 1997, No. 540, § 44; 1997, No. 1132, § 28.

20-78-506. Criteria for grant approval.

The Division of Child Care and Early Childhood Education of the Department of Human Services is authorized to develop and implement criteria for grant approval of interest moneys to be used as authorized in § 20-78-503(d).

History. Acts 1989, No. 202, § 1; 1997, No. 1132, § 29; 2001, No. 305, § 2.

SUBCHAPTER 6 — BACKGROUND CHECKS OF CHILDCARE FACILITY LICENSEES AND EMPLOYEES

SECTION.

20-78-601, 20-78-602. [Repealed.]

20-78-603. [Repealed.]

20-78-604, 20-78-605. [Repealed.]

SECTION.

20-78-606. Criminal history records checks required — Definitions.

Effective Dates. Acts 2009, No. 762, § 12: Sept. 1, 2009.

20-78-601, 20-78-602. [Repealed.]

Publisher's Notes. These sections, concerning child abuse central registry check and criminal records check, were repealed by Acts 2009, No. 762, § 10. The sections were derived from the following sources:

20-78-601. Acts 1993, No. 1293, § 1;

1995, No. 1280, § 7; 1997, No. 1132, § 30; 1997, No. 1198, § 1.

20-78-602. Acts 1993, No. 1293, §§ 2, 3; 1995, No. 1280, § 8; 1997, No. 1132, § 31; 1997, No. 1198, § 2; 1999, No. 1222, §§ 14, 15.

20-78-603. [Repealed.]

Publisher’s Notes. This section, concerning destruction of fingerprint records, was repealed by Acts 1995, No. 1280, § 9.

The section was derived from Acts 1993, No. 1293, § 4.

20-78-604, 20-78-605. [Repealed.]

Publisher’s Notes. These sections, concerning qualifications for child care ownership, operation, or employment and definitions for volunteers’ records check, were repealed by Acts 2009, No. 762, § 10. The sections were derived from the following sources:

20-78-604. Acts 1993, No. 1293, § 5; 1995, No. 1280, § 10; 1997, No. 1132, § 32; 1997, No. 1198, § 3; 2003, No. 1087, § 21; 2003, No. 1378, § 1.

20-78-605. Acts 1995, No. 1280, § 11; 1997, No. 1198, § 4.

20-78-606. Criminal history records checks required — Definitions.

- (a) As used in this section:
 - (1) “Registry records check” means the review of one (1) or more database systems maintained by a state agency that contain information relative to a person’s suitability for licensure or certification as a service provider or employment with a service provider to provide care as that term is defined in § 20-38-101; and
 - (2) “Service provider” means any of the following:
 - (A) A childcare facility as defined by § 20-78-202; and
 - (B) A church-exempt childcare facility as recognized under § 20-78-209.
- (b) Beginning September 1, 2009, a service provider is subject to the requirements of this section and § 20-38-101 et seq. concerning criminal history records checks.
- (c)(1) A person offered employment with a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.
- (2)(A) A person who was offered employment by a service provider before September 1, 2009, was subject to a criminal history records check under §§ 20-78-601 — 20-78-605 [repealed], and has continued to be employed by the service provider who initiated the criminal history records check may continue employment with the service provider based on the results of the criminal history records check process conducted under §§ 20-78-601 — 20-78-605 [repealed].
- (B) When the person next undergoes a periodic criminal history records check, the person’s continued employment with the service provider is contingent on the results of a criminal history records check under § 20-38-101 et seq.
- (d)(1) The person who signs an application for licensure or certification as a service provider on or after September 1, 2009, is subject to the requirements of this section and § 20-38-101 et seq., concerning criminal history records checks.

(2)(A) The person who signed an application for licensure or certification of a service provider before September 1, 2009, was subject to a criminal history records check under §§ 20-78-601 — 20-78-605 [repealed], and has continued to maintain the licensure or certification of the service provider may continue to maintain the licensure or certification of the service provider based on the results of the criminal history records check process conducted under §§ 20-78-601 — 20-78-605 [repealed].

(B) When the service provider next undergoes a periodic criminal history records check, the service provider's continued licensure or certification is contingent on the results of a criminal history records check under § 20-38-101 et seq.

(e) The Division of Child Care and Early Childhood Education of the Department of Human Services shall establish by rule requirements for registry records checks for:

(1) An applicant for licensure or exemption from licensure as a service provider;

(2) An applicant for employment with a service provider; and

(3) An employee of a service provider.

(f) The division shall establish by rule requirements for criminal history and registry records checks of persons who volunteer for a service provider.

History. Acts 2009, No. 762, § 11.

SUBCHAPTER 7 — PRENATAL AND EARLY CHILDHOOD NURSE HOME VISITATION PROGRAM

SECTION.

20-78-701. Legislative declaration.

20-78-702. Creation — Duties and powers.

20-78-703. Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council.

SECTION.

20-78-704. Freedom of Information Act — Exemption.

20-78-705. Patient records.

20-78-706. Limitation.

20-78-707. Referrals — Findings.

20-78-708. Funding.

Effective Dates. Acts 2017, No. 897, § 21: July 1, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that it would be prudent to abolish the State Child Abuse and Neglect Prevention Board and transfer the powers and duties of the State Child Abuse and Neglect Prevention Board to the Department of Human Services; that this act facilitates

the timely transfer of the State Child Abuse and Neglect Prevention Board to the Department of Human Services; and that this act is necessary for alignment with the fiscal year. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2017."

20-78-701. Legislative declaration.

The General Assembly hereby finds that, in order to adequately care for their newborns and young children, new mothers may often benefit from receiving professional assistance and information. Without the assistance and information, a young mother may develop habits or practices that are detrimental to her health and well-being and the health and well-being of her child. The General Assembly further finds that inadequate prenatal care and inadequate care in infancy and early childhood often inhibit a child's ability to learn and develop throughout his or her childhood and may have lasting, adverse effects on the child's ability to function as an adult. The General Assembly recognizes that implementation of a voluntary nurse home visitor program that provides educational, health, and other resources for young mothers during pregnancy and the first years of their infants' lives has been proven to significantly reduce the amount of drug, including nicotine, and alcohol use and abuse by mothers, the occurrence of criminal activity committed by mothers and their children under fifteen (15) years of age, and the number of reported incidents of child abuse and neglect. Such a program has also been proven to reduce the number of subsequent births, increase the length of time between subsequent births, and reduce the mother's need for other forms of public assistance. It is the intent of the General Assembly that such a program be established for the State of Arkansas initially targeting a limited number of first-time teenage mothers and potentially expanding over time.

History. Acts 1999, No. 1115, § 1.

20-78-702. Creation — Duties and powers.

(a) The Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program is established and shall be administered by the Department of Health.

(b) The department shall implement the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation model developed by Dr. David Olds.

(c) The department shall have the power to receive and expend grants, donations, and funds from public and private sources to carry out its responsibilities under this subchapter.

(d) The department shall collect data which will allow a valid and reliable evaluation of the short-term and long-term effectiveness of this intervention in improving maternal and child outcomes. The department shall collect data which at a minimum, will provide information on the effect of prenatal and infancy home visits by nurses on all of the following:

- (1) Preterm delivery, low birth weight, and infant morbidity and mortality;
- (2) Immunizations;
- (3) Mental development and behavioral problems;

- (4) Subsequent pregnancy;
- (5) Educational achievement;
- (6) Labor force participation; and
- (7) Use of public assistance programs.

(e) The department shall coordinate with other state agencies to track childhood injuries, childhood maltreatment, and criminal activity.

(f) The department shall cooperate with other state agencies and the developer of the program to create a more comprehensive evaluation of the overall impact and effectiveness of the program in Arkansas.

History. Acts 1999, No. 1115, § 2; 2001, No. 237, § 1.

20-78-703. Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council.

(a) There is created the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council.

(b) The council shall consist of eleven (11) members to be appointed by the Governor as follows:

(1) Three (3) members from the Department of Health to be appointed by the Governor after consulting the Director of the Department of Health and subject to confirmation by the Senate;

(2) Two (2) members from the College of Medicine of the University of Arkansas for Medical Sciences to be appointed by the Governor after consulting the Dean of the College of Medicine of the University of Arkansas for Medical Sciences and subject to confirmation by the Senate;

(3) One (1) member from the College of Nursing of the University of Arkansas for Medical Sciences to be appointed by the Governor after consulting the Dean of the College of Nursing of the University of Arkansas for Medical Sciences and subject to confirmation by the Senate;

(4) One (1) member from the Arkansas Nurses Association;

(5) One (1) member from the School of Social Work of the University of Arkansas at Little Rock to be appointed by the Governor after consulting the Director of the School of Social Work of the University of Arkansas at Little Rock and subject to confirmation by the Senate;

(6) One (1) member from the Division of Child Care and Early Childhood Education of the Department of Human Services; and

(7) Two (2) members from the public at large, at least one (1) of whom shall be active in child advocacy within the state and one (1) of whom shall be African-American.

(c) The Director of the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program shall serve as an ex officio member of the council.

(d) Members shall be appointed for three-year staggered terms. The staggered terms shall be assigned by lot. The terms shall commence on January 15 of each year.

(e) In the event of a vacancy of one (1) of the members appointed by the Governor for any reason other than expiration of a regular term, the vacancy shall be filled for the unexpired portion of the term by appointment of the Governor, and that person shall possess the same qualifications as are required for initial appointment.

(f) Members of the council shall not be entitled to compensation for their services but may receive expense reimbursement in accordance with § 25-16-902 to be paid by the Department of Health.

(g) The council shall hold its first meeting during January 2000 at a place and time designated by the Governor.

(h) At the initial organizational meeting of the council, the members shall elect from among their number a chair and vice chair. Annually thereafter, a meeting shall be held to elect the Chair of the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council and the Vice Chair of the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program Advisory Council.

(i)(1) Quarterly meetings of the council shall be held.

(2) Special meetings may be called by the chair or as provided by the rules of the council.

(j) The council shall monitor the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program as needed to ensure that the program is implemented according to the program training requirements, program protocols, program management information systems, and program evaluation requirements established by the Department of Health. The council shall evaluate the overall implementation of the program and include the evaluation, along with any recommendations concerning the selected entities or changes in the program training requirements, program protocols, program management information systems, or program evaluation requirements in the annual report submitted to the Department of Health.

(k) The program staff shall submit a written status report annually to the council.

History. Acts 1999, No. 1115, § 3; 2001, No. 237, § 2; 2015, No. 1100, § 54; 2017, No. 897, § 15.

Amendments. The 2015 amendment substituted “appointed by the Governor after consulting” for “nominated by” and added “and subject to confirmation by the Senate” throughout (b).

The 2017 amendment substituted “Three (3)” for “Two (2)” in (b)(1); substituted “School of Social Work of the University of Arkansas at Little Rock” for “University of Arkansas at Little Rock School of Social Work” in (b)(5); and deleted former (b)(7) and redesignated former (b)(7) as (b)(8).

20-78-704. Freedom of Information Act — Exemption.

The Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program is expressly exempted from the Freedom of Information Act of 1967, § 25-19-101 et seq., and is prohibited from supplying any information by individual name or other personal identifier or in a form other than a statistical report or other appropri-

ate form which protects the confidentiality of individuals except to any state agency or department which originally supplied the information to the program unless both the originating agency and the program grant release of this information for a specific purpose.

History. Acts 1999, No. 1115, § 4.

20-78-705. Patient records.

(a) All institutions receiving state or federal support and with patient records containing information pertaining to participating first-time mothers shall be required to share information in those records with the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program.

(b) All participating first-time mothers shall sign an informed consent and medical records release document.

History. Acts 1999, No. 1115, § 5.

20-78-706. Limitation.

Nothing performed pursuant to this subchapter shall be deemed to constitute the practice of home health care as defined in § 20-10-801 et seq.

History. Acts 1999, No. 1115, § 6.

20-78-707. Referrals — Findings.

(a) Any physician, clinic, person, or organization may provide information and referrals to the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program.

(b) No liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided the information or by reason of having released or published the findings of the program in order to reduce child abuse or neglect or to advance medical research or medical education.

History. Acts 1999, No. 1115, § 7.

20-78-708. Funding.

The Director of the Department of Health is authorized to utilize available general revenue savings and allowable federal funds in support of the activities described in this subchapter in the event that sufficient funds are not allocated for the Rita Rowell Hale Prenatal and Early Childhood Nurse Home Visitation Program herein. The director is authorized to transfer appropriations and funds as necessary but only for the purposes provided in this subchapter. Upon approval of the Chief Fiscal Officer of the State and review by the Legislative Council, the transfers shall be made upon the books of the Department of

Finance and Administration, the Auditor of State, and the Treasurer of State.

History. Acts 1999, No. 1115, § 8; 2001, No. 237, § 3.

SUBCHAPTER 8 — BIRTH THROUGH PREKINDERGARTEN TEACHING
CREDENTIAL AND ENDORSEMENT

SECTION.
20-78-801. Credential and endorsement
— Definition.
20-78-802. Minimum requirements for a
teaching credential.

SECTION.
20-78-803. Professional development.
20-78-804. Monitoring and assessment.
20-78-805. Core courses.

A.C.R.C. Notes. Acts 2009, No. 187, § 1, provided: “The General Assembly finds that:
“(1) The State of Arkansas has long been a leader in the field of early childhood education;
“(2) This leadership includes providing an increasingly sophisticated array of professional development options for persons working with young children;
“(3) At present, there is no clear professional pathway for persons who wish to work primarily with children from birth through prekindergarten age;
“(4) While few positions currently require baccalaureate level courses for working with infants and toddlers, an early childhood teaching license is required for teaching public school classes in grades prekindergarten through four (P-4);
“(5) Although some professional development is available for Head Start and Early Head Start staff and for persons

who move through the Arkansas Early Childhood Professional Development System, a clear pathway should be created for those interested in pursuing professional development pathways that do not lead primarily to public school education;
“(6) An inclusive birth through prekindergarten teaching credential and an inclusive birth through prekindergarten endorsement to an Arkansas P-4 teaching license will provide recognized professional pathways that strengthen the existing infrastructure that supports very young children and their families;
“(7) National recommendations suggest that those who work with very young children need preparation specific to that age group; and
“(8) The birth through prekindergarten teaching credential and birth through prekindergarten endorsement program would specifically address the early care and education needs of children from birth through prekindergarten.”

20-78-801. Credential and endorsement — Definition.

(a)(1) A person teaching in a public early childhood education program may obtain a birth through prekindergarten teaching credential from the Division of Child Care and Early Childhood Education of the Department of Human Services.
(2) Subdivision (a)(1) of this section shall not be construed to permit a person teaching in a public early childhood education program to utilize the teaching credential in lieu of a P-4 teaching license issued by the State Board of Education when the license is required.

(b) As used in this subchapter, “public early childhood education program” means an education program that:

- (1) All or part of which is funded with state or federal funds; and
- (2) Serves children whose ages may range from birth through pre-kindergarten.

(c)(1) The division shall develop the teaching credential under this subchapter not later than January 31, 2010.

(2) The teaching credential is valid for five (5) years and may be renewed upon completion of the requirements set forth in law and established by the division.

(3) An applicant for an initial teaching credential or a renewal teaching credential is not required to pay a fee for submitting the application or obtaining the teaching credential.

(d) Institutions of higher education in this state may submit to the Department of Education proposals for the creation of a birth through prekindergarten endorsement for P-4 teacher licensure.

History. Acts 2009, No. 187, § 3.

20-78-802. Minimum requirements for a teaching credential.

The Division of Child Care and Early Childhood Education of the Department of Human Services shall develop a birth through prekindergarten teaching credential that requires without limitation that the applicant:

- (1) Meet a minimum educational level; and
- (2)(A) Complete a core of courses in early childhood development and early childhood education.

(B) The core courses shall meet the division’s standards for the preparation of early childhood professionals.

History. Acts 2009, No. 187, § 3.

20-78-803. Professional development.

A person holding a birth through prekindergarten teaching credential under this subchapter shall complete a minimum number of hours of professional development in early childhood development or early childhood education as determined by the Division of Child Care and Early Childhood Education of the Department of Human Services.

History. Acts 2009, No. 187, § 3.

20-78-804. Monitoring and assessment.

The Division of Child Care and Early Childhood Education of the Department of Human Services shall periodically monitor and assess a person holding a birth through prekindergarten teaching credential as the division may determine by rule.

History. Acts 2009, No. 187, § 3.

20-78-805. Core courses.

In consultation with the Division of Child Care and Early Childhood Education of the Department of Human Services and the state-supported institutions of higher education in this state, the Arkansas Higher Education Coordinating Board shall establish a minimum core of early childhood development and education courses that shall be applied toward meeting the requirements of the prekindergarten endorsement to a teaching degree.

History. Acts 2009, No. 187, § 3.

SUBCHAPTER 9 — HOME VISITATION

SECTION.

20-78-901 — 20-78-908. [Repealed.]

20-78-901 — 20-78-908. [Repealed.]

Publisher’s Notes. This subchapter, concerning home visitation, was repealed by Acts 2017, No. 896, § 3. The subchapter was derived from the following sources:

- 20-78-901. Acts 2013, No. 528, § 3.
- 20-78-902. Acts 2013, No. 528, § 3.

- 20-78-903. Acts 2013, No. 528, § 3.
- 20-78-904. Acts 2013, No. 528, § 3.
- 20-78-905. Acts 2013, No. 528, § 3.
- 20-78-906. Acts 2013, No. 528, § 3.
- 20-78-907. Acts 2013, No. 528, § 3.
- 20-78-908. Acts 2013, No. 528, § 3.

CHAPTER 79
REHABILITATION SERVICES

SUBCHAPTER.

- 1. GENERAL PROVISIONS.
- 2. REHABILITATION ACT OF ARKANSAS.
- 3. TECHNOLOGY EQUIPMENT REVOLVING LOAN FUND.
- 4. TELECOMMUNICATIONS DEVICES.

RESEARCH REFERENCES

ALR. Applicability and application of zoning regulations to single residences employed for group living of persons with developmental disabilities. 32 A.L.R.4th 1018.

Community residence for mentally disabled persons as violation of restrictive covenant. 41 A.L.R.4th 1216.

Validity, construction, and effect of statute requiring consultation with, or approval of, local governmental unit prior to locating group home, halfway house, or similar community residence for the mentally ill. 51 A.L.R.4th 1096.

Workers’ compensation, vocational rehabilitation statutes. 67 A.L.R.4th 612.

SUBCHAPTER 1 — GENERAL PROVISIONS

SECTION.

20-79-101. [Repealed.]

20-79-102. Caseworkers for the blind.

Effective Dates. Acts 1955, No. 168, § 3; Mar. 8, 1955. Emergency clause provided: "It is hereby determined that rehabilitation of the blind of this State permits economic prosperity and public welfare, and that immediate action is necessary in order to provide for more adequate vocational rehabilitation services to the blind, and that the immediate passage of this act

is necessary to provide such vocational rehabilitation services. Therefore, this act being necessary for the immediate preservation of the public peace, health and safety, an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage and approval."

20-79-101. [Repealed.]

Publisher's Notes. This section, concerning the vocational rehabilitation act, was repealed by Acts 2015, No. 1157, § 9.

The section was derived from Acts 1923, No. 70, § 1; Pope's Dig., § 11639; A.S.A. 1947, § 80-2518.

20-79-102. Caseworkers for the blind.

The deputy director of the appropriate division of the Department of Human Services is authorized and empowered to employ caseworkers for the blind, prepare regulations governing personnel standards, define the duties of the caseworkers for the blind, and make such other regulations as may be necessary to carry out the purpose of this section.

History. Acts 1955, No. 168, § 2; A.S.A. 1947, § 83-160.

SUBCHAPTER 2 — REHABILITATION ACT OF ARKANSAS

SECTION.

20-79-201. Title.

20-79-202. Policy.

20-79-203. Definitions.

20-79-204. Deputy director.

20-79-205. Administration.

20-79-206. Operation of rehabilitation facilities.

20-79-207. Cooperative agreements.

20-79-208. Ownership, exchange, and sale of equipment.

20-79-209. Acceptance and use of gifts.

20-79-210. Receipt and disbursement of rehabilitation funds.

SECTION.

20-79-211. Appropriations.

20-79-212. Limitation of political activity by officer or employee.

20-79-213. Eligibility for rehabilitation services.

20-79-214. Nonassignability and exemption from claims of creditors of maintenance.

20-79-215. Hearings.

20-79-216. Use of Arkansas Rehabilitation Services information prohibited — Exception.

Effective Dates. Acts 1955, No. 43, § 20: effective on passage.

Acts 1959, No. 34, § 16: Feb. 13, 1959. Emergency clause provided: "It is hereby ascertained and declared that the existing laws pertaining to the administration and operation of the rehabilitation service are inadequate to fully implement federal legislation in the establishment of rehabili-

tation facilities and that the immediate passage of this Act is necessary to remedy this condition. Therefore, an emergency is declared to exist, and this Act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval."

20-79-201. Title.

This subchapter may be cited as the "Rehabilitation Act of Arkansas".

History. Acts 1955, No. 43, § 1; 1959, No. 34, § 1; A.S.A. 1947, § 80-2540.

20-79-202. Policy.

(a) It is declared to be the policy of the State of Arkansas to provide needed and feasible rehabilitation services to eligible disabled individuals and handicapped individuals throughout the state to the end that they may engage in useful and remunerative occupations to the extent of their capabilities. In rehabilitating individuals who may be expected to achieve the ability of independent living as to dispense with, or largely dispense with, the need for institutional care or, if not institutionalized, to dispense with, or largely dispense with, the need for an attendant, it is also declared to be the policy of the State of Arkansas to provide needed and feasible rehabilitation services to eligible disabled individuals and handicapped individuals throughout the state, thereby increasing the social and economic well-being of themselves and their families and the productive capacity of the state and reducing the burden of dependency on families and taxpayers.

(b) Pursuant to this policy, rehabilitation services shall be provided to citizens throughout the state. The rehabilitation plan adopted pursuant to this subchapter shall be in effect in all political subdivisions of this state.

History. Acts 1955, No. 43, § 2; 1959, No. 34, § 2; A.S.A. 1947, § 80-2541.

20-79-203. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Blind person" means a person who has:

(A) Not more than 20/200 central visual acuity in the better eye after correction; or

(B) An equally disabling loss of the visual field;

(2) "Director" means the Director of the Arkansas Rehabilitation Services who may, at the discretion of the appropriate division of the

Department of Human Services, be designated Executive Officer for the Arkansas Rehabilitation Services;

(3) "Disabled individual" means any person who, as a result of a physical or mental disability:

(A) Has a substantial employment handicap and who may, through receiving vocational rehabilitation services, be qualified for remunerative employment; or

(B) May achieve such ability of independent living, through receiving rehabilitation services, which will enable him or her to dispense with or largely dispense with the need for institutional care or attendant care in the household;

(4) "Employment handicap" means a physical or mental condition which constitutes, contributes to, or if not corrected will probably result in a substantial impairment of occupational performance;

(5) "Establishment of a workshop or rehabilitation facility" means:

(A) In the case of a workshop, the expansion, remodeling, or alteration of existing buildings to adapt them to workshop purposes or to increase employment opportunities, and the acquisition of initial equipment; and

(B) In the case of a rehabilitation facility, the expansion, remodeling, or alteration of existing buildings, the initial equipment of the buildings, and initial staffing thereof;

(6) "Maintenance" means money payment not exceeding the estimated cost of subsistence during the provision of rehabilitation services;

(7) "Nonprofit", when used with respect to a rehabilitation facility or workshop, means a rehabilitation facility or a workshop owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any shareholder or individual, and this income is exempt from taxation under section 101(6) of the Internal Revenue Code;

(8) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a disabled individual's disability within a reasonable length of time, including the use of prosthetic appliances but excluding curative treatment for acute or transitory conditions, excepting treatment of medical complications and emergencies as may arise during the rendering of rehabilitation services;

(9) "Rehabilitation" and "rehabilitation services" mean any service, provided directly or through public or private instrumentalities, found by the director to be necessary to compensate a disabled individual for his or her employment handicap and to enable him or her to engage in a remunerative occupation or to achieve independent living, including, but not limited to, medical and vocational diagnosis, vocational guidance, counseling and placement, training, physical restoration, transportation, occupational and business licenses, equipment, initial stocks and supplies, maintenance, and training books and materials. The term covers the establishment and operation of workshops, rehabilitation

centers, home industries, and small business enterprises for the blind and severely disabled;

(10) "Rehabilitation facility" is a facility operated for the purpose of assisting in the rehabilitation of disabled persons, which provides one (1) or more of the following types of services:

- (A) Testing, fitting, or training in the use of prosthetic devices;
- (B) Pre-vocational or conditioning therapy;
- (C) Physical, corrective, or occupational therapy;
- (D) Adjustment training, or evaluation or control of special impairments; or

(E) Services in which a coordinated approach is made to the physical, mental, and vocational evaluation of impaired persons and an integrated program of physical restoration and pre-vocational or vocational training is provided under competent professional supervision and direction;

(11) "Rehabilitation training" means all necessary training provided to a disabled individual to compensate for his or her employment handicap, including, but not limited to, pre-vocational, vocational, and supplementary training and training provided for the purpose of developing occupational skills and capacities;

(12) "Remunerative employment" includes employment in the competitive labor market, practice of a profession, self-employment, home-making, farm or family work where payment is in kind rather than cash, sheltered employment, home industry, or other homebound work of a remunerative nature;

(13) "Service" means the Arkansas Rehabilitation Services established by this subchapter; and

(14) "Workshop" means a place where any manufacture or handwork is carried on and which is operated for the primary purpose of providing remunerative employment to severely disabled individuals who cannot be readily absorbed in the competitive labor market.

History. Acts 1955, No. 43, § 3; 1959, No. 34, § 3; A.S.A. 1947, § 80-2542. nal Revenue Code is codified as 26 U.S.C. § 501(c).

U.S. Code. Section 101(6) of the Inter-

20-79-204. Deputy director.

(a) The Arkansas Rehabilitation Services shall be administered, under the general supervision and direction of the appropriate division of the Department of Human Services, by a deputy director, appointed in accordance with established personnel standards and on the basis of education, training, experience, and demonstrated ability in the field of rehabilitation.

(b) In carrying out his or her duties under this subchapter, the deputy director:

(1) Shall, with the approval of the Director of the Department of Human Services, prepare regulations for promulgation by the appropriate division of the department governing personnel standards, the

protection of records and confidential information, the manner and form of filing applications, eligibility, and investigation and determination thereof, for rehabilitation services, procedures for fair hearings, and such other regulations as he or she finds necessary to carry out the purposes of this subchapter, including the order to be followed in selecting those to whom rehabilitation services are to be provided in situations where service cannot be provided to all who are eligible for service;

(2) Shall, with the approval of the director, establish appropriate subordinate administrative units within the Arkansas Rehabilitation Services;

(3) Shall recommend to the director for appointment such personnel as he or she deems necessary for the efficient performance of the functions of the Arkansas Rehabilitation Services;

(4) Shall prepare and submit to the director and the Governor annual reports of activities and expenditures and, before each regular session of the General Assembly, estimates of sums required to carry out this subchapter, as well as estimates of the amounts to be made available for this purpose from all sources;

(5) Shall make certification for disbursement, in accordance with regulations, of funds available for carrying out the purposes of this subchapter; and

(6) May, with the approval of the director, delegate to any officer or employee of the Arkansas Rehabilitation Services such of his or her powers and duties, except the making of regulations and the making of recommendations for appointment of personnel, as he or she finds necessary to carry out the purposes of this subchapter.

History. Acts 1955, No. 43, § 5; 1959, No. 34, § 5; A.S.A. 1947, § 80-2544.

20-79-205. Administration.

The deputy director of the appropriate division of the Department of Human Services shall provide the rehabilitation services authorized by this subchapter to the physically or mentally disabled, including blind citizens and those who can benefit from independent living services, as determined by the Director of the Arkansas Rehabilitation Services to be eligible therefor. In carrying out the purposes of this subchapter, the Arkansas Rehabilitation Services is authorized, among other things:

(1) To be the sole state agency to supervise and administer the rehabilitation services authorized by this subchapter except such part as may be administered by a local agency in a political subdivision of the state, in which case the Arkansas Rehabilitation Services shall be the sole agency to supervise the local agency in the administration of that part;

(2) To enter into reciprocal agreements with other states to provide for the services authorized by this subchapter to residents of the state concerned;

(3) To conduct research and compile statistics relating to the provision of services or the need of services of disabled individuals;

(4) To license blind persons to operate vending stands under its supervision and control and subject to the terms and conditions in regulations issued pursuant to § 20-79-204(b)(1) on:

(A) State property;

(B) County or municipal property;

(C) Federal property, pursuant to delegation of authority under the Randolph-Sheppard Act and any amendment thereto or any act of the United States Congress relating to this subject;

(D) Private property; and

(E) Subject to Acts 1945, No. 142, § 2 [superseded]; and

(5) To provide for the establishment, supervision, and control of suitable business enterprises to be operated by the severely disabled individual, including the blind, where the operation will be improved through the management and supervision of the Arkansas Rehabilitation Services.

History. Acts 1955, No. 43, § 6; 1959, Act referred to in this section is codified as No. 34, § 6; A.S.A. 1947, § 80-2545. 20 U.S.C. § 107 et seq.

U.S. Code. The Randolph-Sheppard

20-79-206. Operation of rehabilitation facilities.

(a) The Arkansas Rehabilitation Services is authorized to utilize funds made available:

(1) From appropriations by the United States Congress;

(2) By appropriations by the General Assembly;

(3) From the disbursement of funds of other state agencies; and

(4) By gifts, grants, fees for services, sale of products or items of manufacture or handwork, and donations for the purpose of establishing and operating rehabilitation centers, workshops, business enterprises, programs, and home industries and other facilities.

(b) Gifts, grants, fees for services, income from the sale of products or items of manufacture or handwork, and donations may be deposited into one (1) or more banks and expended by the appropriate division of the Department of Human Services, in compliance with the rules and regulations of the Director of the Department of Finance and Administration, in the establishment and operation of rehabilitation facilities and such other program services as may be determined by the appropriate division of the Department of Human Services, which are consistent with the purposes of this subchapter.

(c) The appropriate division of the Department of Human Services is authorized and empowered to lease or purchase public or private property, real, personal, or mixed, for the purpose of establishing and operating rehabilitation facilities.

History. Acts 1955, No. 43, § 7; 1959, No. 34, § 7; A.S.A. 1947, § 80-2546.

20-79-207. Cooperative agreements.

The appropriate division of the Department of Human Services, through the Arkansas Rehabilitation Services, is empowered and directed to:

(1) Cooperate with any other division of the department in an effort to rehabilitate those disabled individuals who are applicants for or recipients of public assistance. In this respect, it is the intent of the General Assembly that the employment and self-maintenance of disabled adults shall be encouraged to the maximum extent. The Arkansas Rehabilitation Services and any other division of the department shall take all necessary steps to implement the intent of this section, including the joint development of plans for orderly referral and processing of feasible cases with priority being given to those for whom rehabilitation is determined most feasible;

(2) Cooperate with the United States Government, pursuant to agreements, in carrying out the purposes of any federal statutes pertaining to the purposes of this subchapter. The board is also authorized to:

(A) Adopt such methods of administration as are found to be necessary for proper and efficient operation of the agreements or plans for rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of federal statutes and appropriations;

(B) Administer any legislation pursuant thereto enacted by the State of Arkansas;

(C) Direct the disbursement, and administer the use of, all funds provided by the United States Government or the state for the rehabilitation of disabled persons of Arkansas; and

(D) Do all things necessary to ensure the rehabilitation of disabled individuals;

(3) Cooperate with other federal, state, and local public agencies and institutions in providing services relating to rehabilitation, including the Arkansas State Employment Service, and make maximum utilization of the job placement and employment counseling services and other services and facilities of the offices in providing the services authorized by this subchapter in studying the problems involved therein and in establishing, developing, and providing such programs, facilities, and services as may be necessary or desirable;

(4) Cooperate with political subdivisions and other public and non-profit organizations and agencies in the establishment of workshops and rehabilitation facilities and use such facilities as meet the standards established by the state board in providing rehabilitation services; and

(5) Enter into contractual arrangements with the Social Security Administration with respect to certifications of disabilities and performance of other duties and with other authorized public agencies for performance of services related to rehabilitation.

History. Acts 1955, No. 43, § 8; 1959, No. 34, § 8; A.S.A. 1947, § 80-2547.

20-79-208. Ownership, exchange, and sale of equipment.

(a) The Arkansas Rehabilitation Services is authorized to retain title to any property, tools, instruments, training supplies, equipment, or other items of value acquired for use of handicapped persons and to repossess and transfer title for the use of other handicapped persons.

(b) The appropriate division of the Department of Human Services is authorized to offer for sale any surplus items acquired in the operation of the program when they are no longer necessary or to exchange them for necessary items which may be used to greater advantage.

(c)(1) When any surplus equipment is sold or exchanged, a receipt for the equipment shall be taken from the purchaser showing the consideration given for the equipment and forwarded to the Treasurer of State.

(2) Any funds received by the appropriate division of the department pursuant to the transactions shall be deposited into the State Treasury in the appropriate federal or state rehabilitation fund and shall be available for expenditures for any purposes consistent with this subchapter.

History. Acts 1955, No. 43, § 14; A.S.A. 1947, § 80-2553.

20-79-209. Acceptance and use of gifts.

The division is authorized and empowered to accept and use gifts and donations, whether from public or private sources, as may be offered unconditionally or under such conditions as are determined proper and consistent with the provisions of this subchapter, and the division may hold, invest, reinvest, and use the gifts and donations in accordance with the conditions of the gifts and donations.

History. Acts 1955, No. 43, § 11; A.S.A. 1947, § 80-2550.

20-79-210. Receipt and disbursement of rehabilitation funds.

(a) The Treasurer of State is designated as custodian of all moneys received from the United States Government for the purpose of carrying out any federal statutes pertaining to the purpose of this subchapter.

(b) The Treasurer of State shall make disbursements from the federal funds and all state funds available for such purposes upon certification in the manner provided in § 20-79-204.

(c) All federal grants received in adjustment of the federal-state account may be expended during the year received or in any succeeding year.

History. Acts 1955, No. 43, § 9; A.S.A. 1947, § 80-2548.

20-79-211. Appropriations.

(a) Budget estimates of the amount of appropriations needed each fiscal year for rehabilitation services and for the administration of the program shall be submitted by the deputy director to the appropriate division of the Department of Human Services. The amount approved shall be included in the estimates made by the appropriate division to the General Assembly for the operation of the rehabilitation program.

(b) In the event federal funds are available to the State of Arkansas for rehabilitation purposes, the Arkansas Rehabilitation Services is authorized to comply with such requirements as may be necessary to obtain the federal funds in the maximum amount and most advantageous proportion possible insofar as this may be done without violating other provisions of the state law and the Arkansas Constitution.

(c) In the event the United States Congress fails in any year to appropriate funds for grants-in-aid to the state for rehabilitation purposes, the appropriate division shall include as a part of the budget a request for adequate state funds for rehabilitation purposes.

History. Acts 1955, No. 43, § 10; 1959, No. 34, § 9; A.S.A. 1947, § 80-2549.

20-79-212. Limitation of political activity by officer or employee.

(a) No officer or employee engaged in the administration of the rehabilitation program shall use his or her official authority or influence, or permit the use of the rehabilitation program, for the purpose of interfering with an election or affecting the results thereof or for any partisan political purpose.

(b) No officer or employee shall take any active part in the management of political campaigns or participate in any political activity, except that he or she shall retain the right to vote as he or she may please and to express his or her opinions as a citizen on all subjects.

(c) No officer or employee shall solicit or receive, nor shall any officer or employee be obligated to contribute or render, any service, assistance, subscription, assessment, or contribution for any political purpose.

(d) Any officer or employee violating this provision shall be subject to discharge or suspension.

History. Acts 1955, No. 43, § 17; 1959, No. 34, § 13; A.S.A. 1947, § 80-2556.

Cross References. Political activity of public employees permitted, § 21-1-207.

20-79-213. Eligibility for rehabilitation services.

(a) Rehabilitation services shall be provided to any disabled individual:

(1) Who is a bona fide resident of the state at the time of filing his or her application therefor and whose rehabilitation the Director of the Arkansas Rehabilitation Services determines, after full investigation, can be satisfactorily achieved; or

(2) Who is eligible therefor under the terms of an agreement with another state or with the United States Government.

(b) However, except as otherwise provided by law or as specified in any agreement with the United States Government with respect to classes of individuals certified to the appropriate division of the Department of Human Services thereunder, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

(1) Physical restoration;

(2) Transportation provided for purposes other than to determine the eligibility of the individual for rehabilitation services and the nature and extent of the services necessary;

(3) Occupational and business licenses;

(4) Tools, equipment, initial stock and supplies, including livestock and capital advances, books, and training materials; and

(5) Maintenance.

History. Acts 1955, No. 43, § 12; 1959, No. 34, § 10; A.S.A. 1947, § 80-2551.

20-79-214. Nonassignability and exemption from claims of creditors of maintenance.

The right of disabled individuals to maintenance under this subchapter shall not be transferable or assignable at law or in equity and shall be exempt from the claims of creditors.

History. Acts 1955, No. 43, § 13; A.S.A. 1947, § 80-2552.

20-79-215. Hearings.

Any individual applying for or receiving rehabilitation who is aggrieved by any action or inaction of the Arkansas Rehabilitation Services shall be entitled to a hearing in accordance with the regulations adopted and promulgated by the appropriate division of the Department of Human Services on that subject.

History. Acts 1955, No. 43, § 15; 1959, No. 34, § 11; A.S.A. 1947, § 80-2554.

20-79-216. Use of Arkansas Rehabilitation Services information prohibited — Exception.

It shall be unlawful, except for purposes directly connected with the administration of the Arkansas Rehabilitation Services and in accordance with regulations, for any person to solicit, disclose, receive, or

make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of any list of, or name of, or any information concerning persons applying for or receiving rehabilitation, directly or indirectly derived from the records.

History. Acts 1955, No. 43, § 16; 1959, No. 34, § 12; A.S.A. 1947, § 80-2555.

SUBCHAPTER 3 — TECHNOLOGY EQUIPMENT REVOLVING LOAN FUND

SECTION.

20-79-301. Committee — Establishment — Members.

20-79-302. Committee — Meetings — Rules and regulations.

SECTION.

20-79-303. Technology Equipment Revolving Loan Fund — Administration.

Effective Dates. Acts 1997, No. 250, § 258; Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared

to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-79-301. Committee — Establishment — Members.

(a)(1) There is created the Technology Equipment Revolving Loan Fund Committee, to be composed of nine (9) members, of which at least five (5) members must be individuals with disabilities, to be appointed by the Governor as follows:

- (A) The Director of the Arkansas Rehabilitation Services;
- (B) A representative of the banking industry;
- (C) A representative of a disability-related consumer organization;
- (D) A certified public accountant; and
- (E) Five (5) additional members appointed from the state at large.

(2) The director shall be an ex officio member and shall serve as Chair of the Technology Equipment Revolving Loan Fund Committee, voting only in case of a tie vote.

(3) The committee shall elect from its membership a vice chair and a secretary-treasurer.

(b) All members shall be appointed for a term of three (3) years.

(c)(1) Vacancies on the committee from death, resignations, or otherwise shall be filled by appointment of the Governor to fill the unexpired term that had been created.

(2) Any member of the committee who is absent from three (3) successive regular meetings for any reason other than illness of the member, verified by a written sworn statement by his or her attending physician and entered into the minutes of the committee, shall thereby forfeit and vacate his or her membership on the committee. This forfeiture and vacancy shall be certified to the Governor by the committee. The Governor shall fill the vacancy in the same manner as for other vacancies on the committee.

(d) Members of the committee shall serve without additional compensation, except that committee members may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1993, No. 384, § 6; 1997, No. 250, § 208.

Publisher's Notes. Acts 1993, No. 384, § 6 provided, in part, that the three-year term of initial members of the Technology Equipment Revolving Loan Fund Committee begin July 1, 1993; however, at the first meeting of the committee, the members shall, by random process approved by

a majority of the members, assign initial terms to each member. Three (3) of the initial members shall serve a term of one (1) year, three (3) shall serve a term of two (2) years, and three (3) shall serve a term of three (3) years.

Cross References. Technology Equipment Revolving Loan Fund, § 19-5-1059.

20-79-302. Committee — Meetings — Rules and regulations.

(a) The Technology Equipment Revolving Loan Fund Committee shall meet at least one (1) time annually and may meet more often as necessary if meetings are called by the Chair of the Technology Equipment Revolving Loan Fund Committee or by a majority of the committee and if all members of the committee are notified of the time, date, and place of the meeting in advance.

(b)(1) The committee shall adopt rules governing its proceedings.

(2) All rules adopted by the committee shall be promulgated pursuant to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

History. Acts 1993, No. 384, §§ 6-8.

20-79-303. Technology Equipment Revolving Loan Fund — Administration.

(a) The Arkansas Rehabilitation Services shall administer the Technology Equipment Revolving Loan Fund.

(b) The Arkansas Rehabilitation Services shall submit to the Technology Equipment Revolving Loan Fund Committee proposed rules and regulations governing the operation of the fund, including, but not limited to, eligibility for receipt of funds, purposes for which funds may be available, repayment of funds, administrative adjudications in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and all other matters consistent with and necessary to accomplish the purposes as set out in this subchapter.

(c)(1) The committee shall be advisers to the Arkansas Rehabilitation Services in making loans under this subchapter.

(2) The Director of the Arkansas Rehabilitation Services must act on the recommendation of the committee within thirty (30) days of the committee's recommendation or the recommendation of the committee shall be final.

History. Acts 1993, No. 384, §§ 6, 8, 9.

SUBCHAPTER 4 — TELECOMMUNICATIONS DEVICES

SECTION.

20-79-401. Statewide program established.

20-79-402. Eligibility.

SECTION.

20-79-403. Ownership of equipment — Telecommunications Equipment Fund.

A.C.R.C. Notes. Acts 1997, No. 1080, § 14, provided, in part, that "to the extent any provisions of this act conflict with any provisions of Act 501 of 1995 the provisions of Act 501 shall prevail." Acts 1997,

No. 1080 is codified as § 25-29-101 et seq.

Cross References. Arkansas Deaf and Hearing Impaired Telecommunications Services Corporation, § 25-29-101 et seq.

20-79-401. Statewide program established.

(a)(1) The Arkansas Rehabilitation Services is hereby directed to establish, administer, staff, and promote a statewide program to provide access to public telecommunications services by residents of Arkansas who are deaf, hard of hearing, deaf and blind, severely speech-impaired, or who have other disabilities that impair their ability to effectively access the telecommunications network. This program will enable these individuals to access specialized devices or services for telecommunications network access that is functionally equivalent to that enjoyed by individuals without disabilities.

(2) This program shall include, but is not limited to:

(A) The purchase and distribution of telecommunications devices and related devices for the persons who are deaf, hard of hearing, deaf and blind, severely speech-impaired, or who have other disabilities that impair their ability to effectively access the telecommunications network;

(B) The promulgation of procedures, regulations, rules, and criteria necessary to implement and administer this program, including accountability measures which utilize consumer participation in the selection and evaluation of equipment and the eligibility of applicants; and

(C) Other actions as may be necessary to implement and administer this program which are not otherwise prohibited by law.

(b) The Arkansas Rehabilitation Services shall employ at least one (1) full-time staff person to administer the equipment distribution program and may employ any additional support personnel for the

program from within existing staff resources to assure statewide coverage for the program.

History. Acts 1995, No. 501, § 1; 2001, hearing impaired, § 23-17-119.
 No. 530, § 2. Telecommunications Equipment Fund,
Cross References. Surcharges to provide telecommunications for deaf and § 19-6-482.

20-79-402. Eligibility.

- (a) In order for a person to be eligible for the equipment distribution program, a person shall be certified as deaf, hard of hearing, deaf and blind, speech-impaired, or having another disability that impairs the individual's ability to effectively access the telecommunications network by a licensed physician, audiologist, or speech pathologist or by any other method recognized by the Arkansas Rehabilitation Services.
- (b)(1) The Arkansas Rehabilitation Services shall also consider financial need and, in so doing, shall take into account financial need standards or other means tests applicable to other programs administered by the Arkansas Rehabilitation Services when promulgating procedures, regulations, rules, and criteria necessary to implement and administer the program.
- (2) The Arkansas Rehabilitation Services may develop a sliding scale of eligibility to provide equipment to individuals exceeding the baseline needs tests mentioned in this section.

History. Acts 1995, No. 501, § 2; 2001, hearing impaired, § 23-17-119.
 No. 530, § 3. Telecommunications Equipment Fund,
Cross References. Surcharges to provide telecommunications for deaf and § 19-6-482.

20-79-403. Ownership of equipment — Telecommunications Equipment Fund.

- (a)(1) Equipment purchased under this subchapter shall remain the property of the State of Arkansas for two (2) years and then become the property of the recipient of the equipment.
- (2) A person who receives the equipment shall be responsible for the maintenance of the equipment and liable to the Arkansas Rehabilitation Services for the loss of or damage to the equipment.
- (3) In the event of the death of an individual in possession of the equipment, or should a person in possession of the equipment leave the state, the equipment shall automatically revert to the possession of the Arkansas Rehabilitation Services.
- (b) Any money collected by the Arkansas Rehabilitation Services under this section shall be deposited into the Telecommunications Equipment Fund.

History. Acts 1995, No. 501, § 3; 2001, No. 530, § 4. vide telecommunications for deaf and hearing impaired, § 23-17-119.

Cross References. Surcharges to pro-

CHAPTER 80

COMMUNITY SERVICES

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. OLDER WORKER COMMUNITY SERVICE EMPLOYMENT ACT.
3. COMMUNITY SERVICE AND COMMUNITY ACTION PROGRAM ACT OF 1985.
4. COMMISSIONER OF STATE LANDS URBAN HOMESTEAD ACT.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved.]

SUBCHAPTER 2 — OLDER WORKER COMMUNITY SERVICE EMPLOYMENT ACT

SECTION.

20-80-201. Title.
20-80-202. Purpose.
20-80-203. Definitions.

SECTION.

20-80-204. Administration of program.
20-80-205. Program standards and procedures.

20-80-201. Title.

This subchapter may be cited as the “Older Worker Community Service Employment Act”.

History. Acts 1985, No. 1031, § 1;
A.S.A. 1947, § 81-1507.

20-80-202. Purpose.

(a) In order to foster and promote useful part-time employment opportunities in community service activities for persons who are fifty-five (55) years of age or older and who have poor employment prospects, the Older Worker Community Service Employment Program is created.

(b) The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services is authorized to establish and administer the program in accordance with the provisions of this subchapter, utilizing such funds as may be appropriated by the General Assembly in support of this subchapter.

History. Acts 1985, No. 1031, § 2;
A.S.A. 1947, § 81-1508; Acts 2015, No. 295, § 1; 2017, No. 913, § 115.

Amendments. The 2015 amendment deleted “low-income” preceding “persons” in (a).

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Aging and Adult Services” in (b).

20-80-203. Definitions.

As used in this subchapter:

(1) “Community service” means social, health, welfare, educational, recreational development, maintenance, or restoration of natural resources, community betterment or beautification, environmental protection, and other services that are or might be essential and necessary to the community;

(2) “Community-based agency” means a public or not-for-profit organization whose primary purposes and experiences are in the development and implementation of programs for the elderly;

(3)(A) “Eligible individual or participant” means an individual who is fifty-five (55) years of age or older.

(B) Furthermore, participants in the program funded under this subchapter shall not be considered to be state employees as a result of the employment for any purpose; and

(4) “Program” means the Older Worker Community Service Employment Program.

History. Acts 1985, No. 1031, § 3; A.S.A. 1947, § 81-1509; Acts 1991, No. 772, § 1; 2015, No. 295, § 2.

Amendments. The 2015 amendment deleted “unless the context otherwise requires” in the introductory language; substituted “that” for “which” in (1); deleted former (3) and (4); redesignated (5) as

present (3)(A) and (B); deleted “and whose household income does not exceed two hundred percent (200%) of the Supplemental Security Income level, as established by the Social Security Administration” from the end of (3)(A); and redesignated (6) as present (4).

20-80-204. Administration of program.

To implement this subchapter, the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services is authorized:

(1)(A) To enter into agreements with and make program grants to community-based agencies for the purpose of establishing statewide implementation of the Older Worker Community Service Employment Program.

(B) However, the division shall make no payments towards the cost of the program unless the division determines that the community-based agencies will adhere to the provisions of § 20-80-205 and the established rules or policies related to the administration of this subchapter;

(2) To allow reasonable and appropriate administrative cost for the total program, which in no event shall exceed the allowable percentage limitation established for Title III of the Older Americans Act, and 45 C.F.R. § 1321.1 et seq.; and

(3) To make, issue, and amend rules and policies necessary to effectively carry out this subchapter.

History. Acts 1985, No. 1031, § 4; A.S.A. 1947, § 81-1510; Acts 2015, No. 295, § 2; 2017, No. 913, § 116.

Amendments. The 2015 amendment substituted “To implement” for “In order to carry out the provisions of” in the introductory language; redesignated (1) as (1)(A) and (B); substituted “rules” for “regulations” in (1)(B); in (2), substituted “Title III” for “Title V” and inserted “45 CFR Part 1321” near the end; and, in (3), substituted “rules” for “regulations”, de-

leted “as may be” preceding “necessary”, and deleted “the provisions of” preceding “this subchapter”.

The 2017 amendment substituted “Division of Aging, Adult, and Behavioral Health Services” for “Division of Aging and Adult Services” in the introductory language.

U.S. Code. Title III of the Older Americans Act, referred to in subdivision (2) of this section, is codified as 42 U.S.C. § 3021 et seq.

20-80-205. Program standards and procedures.

(a) In the development and implementation of the Older Worker Community Service Employment Program, the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services shall adopt program standards and procedures that will ensure that the intent and provisions of this subchapter are adhered to by community-based agencies receiving program grant funds.

(b) At a minimum, the program and each program grant funded will:

(1) Provide employment only for eligible individuals, except for necessary technical, administrative, and supervisory personnel, but the personnel shall, to the fullest extent possible, be recruited from among eligible individuals;

(2) Employ eligible individuals in community service programs or agencies sponsored by organizations exempt from taxation under the provisions of the Internal Revenue Code, other than political parties, except projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship;

(3) Contribute to the general welfare of the community;

(4) Provide employment for eligible individuals whose opportunities for other suitable public or private paid employment are poor;

(5) Result in an increase in employment opportunities for eligible individuals and will not result in the displacement of employed workers or impair existing contracts;

(6) Utilize methods of recruitment and selection which will assure that the maximum number of eligible individuals will have an opportunity to participate in the program;

(7) Ensure that, to the extent feasible, the program will serve the needs of minority eligible individuals in proportion to their number in the state;

(8) Ensure that safe and healthy conditions of work will be provided and that persons employed in community services jobs assisted under this subchapter shall be paid at least the minimum wage as established by the Fair Labor Standards Act; and

(9) Ensure that program employers provide personnel fringe benefits for participants. The coverage shall include workers’ compensation, unemployment insurance, Federal Insurance Contributions Act, 26

U.S.C. § 3128, and other coverage as may be required by regulation or policy.

History. Acts 1985, No. 1031, § 5; A.S.A. 1947, § 81-1511; Acts 2017, No. 913, § 117.

Amendments. The 2017 amendment substituted “Division of Aging, Adult, and

Behavioral Health Services” for “Division of Aging and Adult Services” in (a).

U.S. Code. The Fair Labor Standards Act, referred to in this section, is codified as 29 U.S.C. § 201 et seq.

RESEARCH REFERENCES

ALR. Construction and Application of Federal Insurance Contributions Act, 26

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SUBCHAPTER 3 — COMMUNITY SERVICE AND COMMUNITY ACTION PROGRAM
ACT OF 1985

SECTION.

- 20-80-301. Title.
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- 20-80-304. Recognition of agencies generally — Establishment of financial assistance.
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SECTION.

- 20-80-307. Recognition of representative organizations.
- 20-80-308. [Repealed.]
- 20-80-309. Funding — Appropriations — Permitted use of funds.
- 20-80-310. Funding — Notification by General Assembly — Application.
- 20-80-311. Funding — Antipoverty programs.

Preambles. Acts 1985, No. 345 contained a preamble which read: “Whereas, community action organizations have been organized and are operational as non-profit corporations serving the low-income citizens of Arkansas; and

“Whereas, such agencies have been, and are now, providing human services in such fields as aging, health, transportation, nutrition, housing, home weatherization, developmental child care, family planning and other related activities which the General Assembly considers as vital to the well-being of lower-income persons of the State;

“Now therefore”

Effective Dates. Acts 1985, No. 345, § 10: Mar. 13, 1985. Emergency clause provided: “It is hereby found and determined by the General Assembly that Community Action Agencies provide services which are basic and essential to the well-being of low-income and economically disadvantaged persons of this State. It is further determined that the delivery of

such services should be officially recognized in order to assure the continuation of such services, and to promote the development of new services to solve existing human service problems. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.”

Acts 2003, No. 1473, § 74: July 1, 2003. Emergency clause provided: “It is found and determined by the General Assembly of the State of Arkansas that this act includes technical corrects to Act 923 of 2003 which establishes the classification and compensation levels of state employees covered by the provisions of the Uniform Classification and Compensation Act; that Act 923 of 2003 will become effective on July 1, 2003; and that to avoid confusion this act must also effective on July 1, 2003. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public

peace, health, and safety shall become effective on July 1, 2003.”

20-80-301. Title.

This subchapter shall be known as the “Community Service and Community Action Program Act of 1985”.

History. Acts 1985, No. 345, § 1; A.S.A. 1947, § 83-1107.

20-80-302. Purpose.

(a) The purpose of this subchapter is to encourage nonprofit community action organizations which have been formed to provide basic and essential human services to low income and elderly citizens of Arkansas in the areas of health, transportation, housing, home repair and weatherization, aging programs and aging alternatives to institutionalization, developmental child care and enrichment, youth opportunity programs, low-income home energy assistance programs, and other related activities which the General Assembly recognizes as beneficial to a large number of Arkansas citizens.

(b) It is further the purpose of this subchapter to encourage and promote the operations and activities of community action agencies whether the activities are conducted by one (1) agency or by two (2) or more cooperating agencies.

History. Acts 1985, No. 345, § 1; A.S.A. 1947, § 83-1107.

20-80-303. Exception.

Nothing in this subchapter is intended to change or in any way conflict with the status, boundaries, or functions of regional or metropolitan planning commissions or councils of governments established under §§ 14-17-301 — 14-17-309 and 14-56-501 — 14-56-509 nor the status, boundaries, and functions of planning and development districts as established and recognized under §§ 14-166-201 — 14-166-205.

History. Acts 1985, No. 345, § 2; A.S.A. 1947, § 83-1108.

20-80-304. Recognition of agencies generally — Establishment of financial assistance.

In furtherance of the purposes of this subchapter, the General Assembly recognizes community action organizations in their efforts to provide services beneficial to low-income citizens of this state and establishes a program of financial assistance to recognized community action agencies to enable them to continue and expand activities and programs stated in § 20-80-302.

History. Acts 1985, No. 345, § 1; A.S.A. 1947, § 83-1107.

20-80-305. Recognition of specific agencies — Jurisdiction.

The General Assembly recognizes as community action agencies and their jurisdiction, the following nineteen (19) existing community action organizations:

- (1) Arkansas River Valley Area Council, consisting of Franklin, Scott, Yell, Johnson, Pope, Conway, Perry, Logan, and Polk counties;
- (2) Black River Area Development Corporation, consisting of Randolph, Clay, and Lawrence counties;
- (3) Central Arkansas Development Council, consisting of Saline, Hot Spring, Clark, Pike, and Montgomery counties;
- (4) Community Action Program for Central Arkansas, consisting of White, Faulkner, and Cleburne counties;
- (5) Crowley's Ridge Development Council, Inc., consisting of Craighead, Greene, Jackson, and Poinsett counties;
- (6) Crawford-Sebastian Community Development Council, Inc., consisting of Crawford and Sebastian counties;
- (7) Community Services Office, Inc., consisting of Garland County;
- (8) East Central Arkansas Economic Opportunity Corporation, consisting of Cross, St. Francis, Woodruff, Crittenden, and Lee counties;
- (9) Economic Opportunity Agency of Pulaski County, consisting of Pulaski and Lonoke counties;
- (10) Economic Opportunity Agency of Washington County, consisting of Washington County;
- (11) Arkansas Economic Opportunity Commission, Inc., consisting of Mississippi County;
- (12) Mid-Delta Community Services, Inc., consisting of Phillips, Monroe, and Prairie counties;
- (13) Northcentral Arkansas Development Council, consisting of Fulton, Izard, Sharp, Stone, and Independence counties;
- (14) Office of Human Concern, consisting of Benton, Carroll, and Madison counties;
- (15) Ozark Opportunities, Inc., consisting of Van Buren, Searcy, Boone, Marion, Baxter, and Newton counties;
- (16) Pine Bluff Jefferson County Economic Opportunity Commission, Inc., consisting of Jefferson, Grant, Arkansas, Lincoln, and Cleveland counties;
- (17) South Central Community Action Authority, consisting of Ouachita, Columbia, Calhoun, Dallas, and Union counties;
- (18) Southeast Arkansas Community Action Corporation, consisting of Bradley, Drew, Desha, Ashley, and Chicot counties; and
- (19) Southwest Arkansas Development Council, Inc., consisting of Little River, Hempstead, Miller, Lafayette, Howard, Sevier, and Nevada counties.

History. Acts 1985, No. 345, § 2; A.S.A. 1947, § 83-1108.

20-80-306. Recognition of specific agencies — Change of boundaries and number.

The appropriate division of the Department of Human Services is authorized to change the boundaries and the number of officially recognized community action agencies, provided that concurrence therein is obtained of the governing boards of each of the affected existing agencies as recognized in § 20-80-305.

History. Acts 1985, No. 345, § 2; A.S.A. 1947, § 83-1108.

20-80-307. Recognition of representative organizations.

(a) The governing boards of directors of the nineteen (19) existing community action organizations are recognized as the representative organizations of the community action agencies as recognized in § 20-80-305.

(b) The appropriate division of the Department of Human Services is authorized, whenever agency boundaries have been changed in accordance with § 20-80-306, to recognize the representative organizations of the new community action agencies.

(c) In order to qualify for recognition and further benefits under this subchapter, a community action agency shall have been organized and constituted under the provisions of the Community Service Block Grant Act of 1981 and shall have a governing board whose members are elected and are representatives of specific community interests in accordance with the Community Service Block Grant Act of 1981.

History. Acts 1985, No. 345, § 3; A.S.A. 1947, § 83-1109. **U.S. Code.** The Community Service Block Grant Act of 1981, referred to in this section, is codified as 42 U.S.C. § 9901 et seq.

20-80-308. [Repealed.]

Publisher's Notes. This section, concerning the Community Services Advisory Board, was repealed by Acts 2003, No. 1473, § 47. The section was derived from Acts 1985, No. 345, § 4; A.S.A. 1947, § 83-1110; Acts 1997, No. 250, § 209.

20-80-309. Funding — Appropriations — Permitted use of funds.

(a) The appropriate division of the Department of Human Services is authorized to make payments from time to time to officially recognized organizations of community action agencies from state funds appropriated for that purpose. Payments shall be scheduled to begin as nearly as possible on July 1 of each fiscal year and on the first day of each calendar quarter thereafter.

(b) Funds appropriated for payments to the organizations of community action agencies shall be allocated on the basis of equitable criteria

established by the appropriate division based upon application for programs.

(c) If any change occurs in the jurisdictions of any of the officially recognized nineteen (19) community action agencies, as authorized in § 20-80-306, the first allocation of appropriated funds to the former agency or agencies, which comprise counties reorganized under the jurisdiction of a newly recognized agency, shall be apportioned to the new agency or agencies in accordance with equitable criteria established by the appropriate division.

(d)(1)(A) At least ninety percent (90%) of the funds received and appropriated by the state from the United States Government under the community services block grant shall be allocated to community action agencies, as defined in this subchapter, under a formula to be determined by the appropriate division which is designated as the disbursing agency for community services block grant funds.

(B) The powers of every community action agency governing board shall include the power to appoint persons to senior staff positions to determine major personnel, fiscal, and program policies to approve overall program plans and priorities and to assure compliance with conditions of and approve proposals for financial assistance under this subchapter.

(C) No more than five percent (5%) of the community services block grant may be used by the disbursing agency for administrative purposes.

(D) Any subsequently remaining funds may be used for purposes to be determined by the disbursing agency.

(2) In the event that the community services block grant is eliminated, each community action agency shall be funded, subject to the restrictions of applicable law or regulation, in the distribution of other federal funds which can be used to support antipoverty programs.

History. Acts 1985, No. 345, § 5; A.S.A. 1947, § 83-1111.

20-80-310. Funding — Notification by General Assembly — Application.

(a) Whenever the General Assembly has appropriated funds in order to make payments to officially recognized community action agencies as authorized in this subchapter, the appropriate division of the Department of Human Services shall notify the respective governing boards of the agencies of the amount allocated to the agencies as provided in § 20-80-308 [repealed] and shall notify the respective boards that application for the funds may be made upon forms provided therefor by the appropriate division.

(b) Upon the receipt of application for the funds, the appropriate division shall determine that the following conditions have been met before disbursing the payments:

(1) The community action organization is an officially recognized community action agency, in accordance with §§ 20-80-305 and 20-80-306 and has been constituted in accordance with § 20-80-307(c); and

(2) The agency board of directors shall certify that a proposed budget has been established for the expenditure of state funds for purposes consistent with the purpose of this subchapter.

(c) At the end of each fiscal year, an audited report of each community action agency shall be submitted to the appropriate division.

(d) Any amounts of state funds unexpended or unobligated by June 30 shall be returned by the agency to the State Treasury.

(e) If any community action agency shall have expended any state funds for any purpose not within the purpose and intent of this subchapter, that amount shall be reimbursed by the agency to the State of Arkansas before any additional payments may be made to the agency.

History. Acts 1985, No. 345, § 6; A.S.A. 1947, § 83-1112.

20-80-311. Funding — Antipoverty programs.

State funds appropriated by the General Assembly to the appropriate division of the Department of Human Services for payments to be made to recognize community action agencies in accordance with this subchapter shall be used by the agencies for funding antipoverty programs designated by state regulations.

History. Acts 1985, No. 345, § 7; A.S.A. 1947, § 83-1113.

SUBCHAPTER 4 — COMMISSIONER OF STATE LANDS URBAN HOMESTEAD ACT

SECTION.

20-80-401. Title.

20-80-402. Purpose.

20-80-403. Definitions.

20-80-404. Duties of Commissioner of State Lands.

20-80-405. Applications for donations.

20-80-406. Disposition of applications — Prior municipal approval.

SECTION.

20-80-407. Contracts or deeds.

20-80-408. Taxes — Liens — Encumbrances.

20-80-409. Title transfer — Consideration — Costs.

20-80-410. Development.

20-80-411. Restrictions — Taxes.

20-80-401. Title.

This subchapter shall be known as the “Commissioner of State Lands Urban Homestead Act”.

History. Acts 1993, No. 1009, § 1.

20-80-402. Purpose.

(a) This subchapter shall apply only to urban property and shall be established to prevent waste of valuable real property already offered

for public sale and not disposed of which has been certified to the office of the Commissioner of State Lands for nonpayment of ad valorem real property taxes.

(b) The further intent of this section is to provide cities, incorporated towns, legal entities that intend to apply for an award of low-income housing tax credits under section 42 of the Internal Revenue Code, and community organizations the ability to better serve any eligible person in need of a homestead and to provide the eligible person the opportunity to hold and maintain a private residence, and to contribute to the taxing structure of the applicable taxing units.

History. Acts 1993, No. 1009, § 3;
2011, No. 1013, § 1.

U.S. Code. Section 42 of the Internal
Revenue Code refers to 26 U.S.C. § 42.

20-80-403. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) “Applicant” means any city, incorporated town, legal entity that intends to apply for an award of low-income housing tax credits under section 42 of the Internal Revenue Code, or community organization applying to the Commissioner of State Lands for donation of tax-forfeited land;

(2)(A) “Community organization” means a recreational, educational, social, or benevolent organization dedicated to improving the mental or physical health and welfare of its members and of the public.

(B) A community organization may be established for community betterment or beautification, environmental protection, establishment of housing, and other purposes beneficial to the community and may be a division of the federal, state, county, or local government or may be a private nonprofit corporation;

(3) “Eligible person” means an individual person or family unit meeting eligibility criteria for the sale, lease, or grant of a homestead. A corporation, partnership, association, or similar organization shall not be an eligible person;

(4) “Homestead” means the home and accompanying or adjoining land of the primary residence of a person; and

(5) “Urban” means land found within the city limits of any city or incorporated town in the state.

History. Acts 1993, No. 1009, § 2;
2011, No. 1013, § 2.

U.S. Code. Section 42 of the Internal
Revenue Code refers to 26 U.S.C. § 42.

20-80-404. Duties of Commissioner of State Lands.

(a) All land subject to donation under this subchapter must have been offered for sale to the highest bidder by the Commissioner of State Lands pursuant to § 26-37-101 et seq.

(b) After the Commissioner of State Lands has met the requirements of § 26-37-101 et seq., the Commissioner of State Lands may accept applications for donation of remaining tax-forfeited urban property.

(c) The Commissioner of State Lands shall prescribe the requisite contracts, forms, or applications.

History. Acts 1993, No. 1009, § 4.

20-80-405. Applications for donations.

(a)(1) Applications for donation may be made by the following persons or community organizations:

(A) Agents of cities and incorporated towns that also have one (1) of the community organizations listed in subdivisions (a)(1)(B)(i)-(iv) of this section; or

(B) The chair of the board or executive director of one (1) of the following community organizations:

(i) A housing authority;

(ii) A community development agency;

(iii) A community development corporation; or

(iv) A local initiative support corporation.

(2) Other community organizations may apply for donation of the land so long as that organization is a nonprofit corporation that qualifies as an Internal Revenue Service section 501(c)(3) tax-exempt organization.

(3) A legal entity that intends to apply for an award of federal low-income housing tax credits under section 42 of the Internal Revenue Code may apply for donation of land under this subchapter only if the legal entity is a qualified nonprofit organization pursuant to section 42 of the Internal Revenue Code and accompanying regulations and guidance of the Internal Revenue Service.

(b) Any applicant must have legal authority to accept and convey title to properties for homesteading purposes.

History. Acts 1993, No. 1009, §§ 5, 6; 2011, No. 1013, § 3.

U.S. Code. Internal Revenue Service Section 501(c)(3), referred to in this section, is probably a reference to 26 U.S.C. § 501(c)(3).

Section 42 of the Internal Revenue Code refers to 26 U.S.C. § 42.

20-80-406. Disposition of applications — Prior municipal approval.

(a) The Commissioner of State Lands may accept, modify, or deny any application.

(b) Before the Commissioner of State Lands may donate any parcel to any applicant, other than agents of a city or incorporated town, the city or town shall grant express approval of the donation, thereby avoiding possible conflicts in planning or development projects overseen by the cities or towns of this state.

History. Acts 1993, No. 1009, §§ 7, 8.

20-80-407. Contracts or deeds.

(a)(1) Accepted applications will result in a contract or limited warranty donation deed between the Commissioner of State Lands and the applicant for donation of tax-forfeited lands.

(2) The contract or deed, to be provided by the Commissioner of State Lands, shall provide that the applicant will have primary responsibility for the development of the donated parcel.

(3) The contract or deed shall also set out the eligibility criteria for determining an eligible person with respect to a sale, lease, or grant of a homestead from the donated parcel and shall require the applicant to follow the eligibility criteria in making sales, leases, or grants from the donated parcel.

(b) Upon execution of a donation deed to the applicant, the Commissioner of State Lands may no longer be an immediate party to the construction or maintenance of the parcel, except that the contract or donation deed may contain a possibility of reverter to the Commissioner of State Lands should the proposed homestead, for any reason, not develop pursuant to specifications.

(c) In addition, the contract or deed may provide the time period within which the property may be developed.

History. Acts 1993, No. 1009, § 8.

20-80-408. Taxes — Liens — Encumbrances.

(a) With execution of the donation deed, the Commissioner of State Lands may waive outstanding taxes, penalties, and interest within the authority of the office of the Commissioner of State Lands.

(b) Other liens or encumbrances attached to the property not within the authority of the Commissioner of State Lands pursuant to § 26-37-101 et seq. will be considered a matter to be resolved between the applicant and the lienholder.

History. Acts 1993, No. 1009, § 9.

20-80-409. Title transfer — Consideration — Costs.

(a) No consideration shall be required for the transfer of title between the Commissioner of State Lands and the applicant, except one dollar (\$1.00).

(b) Additional, actual costs associated with the conveyance, including, but not limited to, abstracting, researching, confirmation of title, and the filing of documents with the county, may be charged to the applicant by the Commissioner of State Lands.

History. Acts 1993, No. 1009, § 10.

20-80-410. Development.

(a)(1) Development of the donated parcel shall be strictly for the construction or maintenance of a homestead for eligible persons.

(2) Upon completion of the construction of the home, the city, incorporated town, or community organization may sell, lease, or grant the home to any eligible person.

(b)(1) The homestead is to be used strictly for the private residence of the eligible person.

(2) The sale, lease, or grant of the home shall be a transaction between the applicant and the eligible person.

History. Acts 1993, No. 1009, §§ 11, 12.

20-80-411. Restrictions — Taxes.

(a) The applicant is responsible for transferring the donated parcel to an eligible person.

(b) The eligibility criteria for the sale, lease, or grant of a homestead shall be established by the Commissioner of State Lands and shall take into account the income of the person or family unit, which shall not exceed the median family income, as determined by the United States Department of Housing and Urban Development, for the area in which the applicant is located.

(c) Upon transferring the land to the eligible person, the homestead will be treated as any other private residence and subject to all laws and regulations of the government, including the payment of real property taxes.

History. Acts 1993, No. 1009, §§ 2, 13.

CHAPTER 81**VETERANS' AFFAIRS****SECTION.**

- 20-81-101. Arkansas Veterans' Child Welfare Service.
- 20-81-102. Department of Veterans Affairs — Creation — Powers and duties.
- 20-81-103. Department of Veterans Affairs — Appointment of director — Employees.
- 20-81-104. Arkansas Veterans' Commission.
- 20-81-105. Veterans' Home.
- 20-81-106. County programs.

SECTION.

- 20-81-107. Gifts, volunteer services, etc.
- 20-81-108. Action by municipal governing bodies.
- 20-81-109. Cooperation of other state agencies.
- 20-81-110. [Repealed.]
- 20-81-111. Entitlement of all veterans to privileges.
- 20-81-112. State veterans' cemetery system.
- 20-81-113. Uniform data collection system.

A.C.R.C. Notes. Acts 2017, No. 959, § 1, provided: "Legislative findings and intent — Military transition assistance program.

"(a) The General Assembly finds that:

"(1) A large majority of military veterans describe transitioning to civilian employment as the most difficult challenge in making the transition back to civilian life;

"(2) Veterans face several obstacles that can often be overlooked by employers and unaccounted for by transitional programs;

"(3) Within the past six (6) years, the United States Government and all fifty (50) states have increased efforts to improve the employment situation for returning veterans;

"(4) In addition to the federal transition goals, plans and success program required under 10 U.S.C. § 1144, many states are creating programs to ensure that veterans receive the resources and information they need to make a smooth transition from military to civilian life and help prevent veteran homelessness; and

"(5) There is an economic importance and community value of facilitating military veterans into civilian employment and of establishing a military transition assistance program to ensure the future well-being and health of Arkansas's service members and veterans.

"(b) As used in this section, 'military occupational specialty' means a job or career field in which a military member has performed or received specialized job related training while serving in the United States Armed Forces.

"(c) The Department of Veterans Affairs and the Department of Workforce Services are encouraged to study the need for and the resources available to establish an online central repository that provides service members and veterans with information to assist in finding civilian employment, including without limitation:

"(1) Information on civilian credentialing opportunities for every stage of training for a military occupational specialty;

"(2) Information on civilian occupational equivalents of a military occupational specialty, including without limitation:

"(A) Required skills and education prerequisites;

"(B) Salary information; and

"(C) Available job listings; and

"(3) Information on opportunities to use educational military benefits available to service members and veterans

which through corresponding training or continuing education leads to a certification exam and further credentialing opportunities.

"(d) For the purpose of educating civilian workforce employers, the Department of Veterans Affairs and the Department of Workforce Services are encouraged to study the need for and the resources available to provide information concerning military occupational services to state agencies and other agencies, including without limitation:

"(A) Military course training curricula;

"(B) Professional skills developed; and

"(C) Civilian occupational equivalents of a military occupational specialty".

Preambles. Acts 1969, No. 189, contained a preamble which read: "Whereas, thousands of children of War Veterans are given emergency services, such as food, shelter and clothing each month while arrangements are being made to take care of them through conventional welfare and relief agencies; and

"Whereas, this invaluable humane obligation, assumed by the American Legion's Child Welfare Division since 1923, has assisted children and families in every county in the state when no other help was readily available; and

"Whereas, through the American Legion, in Arkansas, more than 400 volunteer posts and American Legion Auxiliary service officers and child welfare chairmen are available on a 24-hour, seven-day-a-week basis to render this vital free service to children of all war veterans, regardless of race, creed or color; and

"Whereas, The American Legion and The American Legion Auxiliary continues to support this program financially through its numerous posts and units; and

"Whereas, with the annual return of more than 5,000 veterans of the Vietnam War to Arkansas the demand for these services will increase tremendously; and

"Whereas, no other such emergency assistance is provided in this state;

"Now, therefore ... "

Effective Dates. Acts 1969, No. 189, § 3: Mar. 7, 1969. Emergency clause provided: "It is hereby found and determined by the General Assembly that the functions, duties and services of the Child Welfare Division of the Arkansas Veterans Service Office have expanded tremen-

dously; that in order to properly administer such services under a unified program, it is necessary that this Act become effective immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall become effective from and after its passage and approval."

Acts 1973, No. 251, § 2: approved Mar. 9, 1973. Emergency clause provided: "This act is declared to be in the interest of preserving the public peace, health, and safety of state government; and to entitle the veterans of the Vietnam War to the same preferences and privileges as are provided the veterans of the World Wars, the Korean War, and all other wars. An emergency is hereby declared to exist, and this Act shall take effect immediately upon date of passage."

Acts 1979, No. 324, § 18: July 1, 1979. Emergency clause provided: "It is hereby found and determined by the Seventy-Second General Assembly, that the effectiveness of this Act on July 1, 1979 is essential to the operation of the agency established in this Act and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1979 could work irreparable harm upon the proper administration and providing of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1979."

Acts 1985, No. 431, § 2: Mar. 20, 1985. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is necessary to clarify the authority of the Arkansas Department of Veterans Affairs to accept the donation of real property for use as veterans cemeteries; that certain individuals and organizations desire to donate real property to the Department; that there is insufficient access to a national veterans cemetery for many Arkansas veterans; and that this Act is immediately necessary to alleviate the problem. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 157, § 4: Mar. 10, 1987. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Arkansas Veterans Home should already have been converted to a nursing home facility; that legislation was enacted in 1985 to accomplish the same but has not been properly interpreted; that our veterans are suffering undue hardship as a result of this delay, and that the hardship will continue until the conversion of the facility; that the increasing age of Arkansas veterans increases the need for the conversion on a daily basis; and this Act will provide for the expedient conversion of the Veterans Home into a nursing home facility. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1987, No. 202, § 14: July 1, 1987. Emergency clause provided: "It is hereby found and determined by the Seventy-Sixth General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1987 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1987 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1987."

Acts 1989 (1st Ex. Sess.), No. 217, § 14: July 1, 1989. Emergency clause provided: "It is hereby found and determined by the Seventy-Seventh General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a two (2) year period; that the effectiveness of this Act on July 1, 1989 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the Regular Session, the delay in the effective date of this Act beyond July 1, 1989 could work irreparable harm

upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1989."

Acts 1993, No. 719, § 5: Mar. 25, 1993. Emergency clause provided: "It is hereby found and determined by the Seventy-Ninth General Assembly of the State of Arkansas that Arkansas law specifies the qualification for the Director of the Department of Veterans' Affairs; that three (3) years residency is presently required to qualify for appointment as Director; that such a long period of time for residency precludes many qualified people from being eligible for appointment to this important position, and that the qualifications should be changed immediately. Therefore, an emergency is hereby declared to exist, and this act being necessary for the immediate preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall be-

come effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2013, No. 988, § 7: July 1, 2013. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2013 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2013 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2013."

Acts 2014, No. 262, § 15: July 1, 2014. Emergency clause provided: "It is found and determined by the General Assembly, that the Constitution of the State of Arkansas prohibits the appropriation of funds for more than a one (1) year period; that the effectiveness of this Act on July 1, 2014 is essential to the operation of the agency for which the appropriations in this Act are provided, and that in the event of an extension of the legislative session, the delay in the effective date of this Act beyond July 1, 2014 could work irreparable harm upon the proper administration and provision of essential governmental programs. Therefore, an emergency is hereby declared to exist and this Act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2014."

RESEARCH REFERENCES

Am. Jur. 77 Am. Jur. 2d, Veterans, § 1 et seq.

20-81-101. Arkansas Veterans' Child Welfare Service.

(a)(1) There is established the Arkansas Veterans' Child Welfare Service.

(2) The Arkansas Veterans' Child Welfare Service shall be under the direction of a director to be named by the Governor upon written recommendation by the governing body of the American Legion Department of Arkansas.

(3) The Director of the Arkansas Veterans' Child Welfare Service shall serve at the pleasure of the Governor.

(b)(1) The Arkansas Veterans' Child Welfare Service shall establish a program of furnishing temporary and interim welfare and rehabilitation services and assistance for minor children of honorably discharged Arkansas veterans who are deceased or medically incapacitated.

(2) The Arkansas Veterans' Child Welfare Service is authorized to enter into contracts and agreements with one (1) or more veterans' organizations in this state, with private individuals or corporations, or with the United States Government for the sharing of facilities or services and for the administration of funds in furtherance of veterans' child welfare services.

(c) Funds granted to the Arkansas Veterans' Child Welfare Service, other than state-appropriated funds, may be deposited into one (1) or more bank accounts in banks in this state and shall be administered in accordance with purposes for which the funds were granted as authorized in this section.

History. Acts 1969, No. 189, § 1; A.S.A. 1947, § 11-1409; Acts 1997, No. 100, § 1.

Publisher's Notes. Acts 1969, No. 189, § 1, provided, in part, that all functions, powers, and duties of the Child Welfare

Division of the Arkansas Veterans' Service Office and all of its books, furnishings, records, and funds should be transferred to and administered by the Arkansas Veterans' Child Welfare Service.

20-81-102. Department of Veterans Affairs — Creation — Powers and duties.

(a) There is created the Department of Veterans Affairs.

(b) The department shall:

(1) Supervise the operation of the Veterans' Home; and

(2) Supervise the activities, training, and testing of the county veterans' service officers located throughout the State of Arkansas.

(c) The department is authorized to develop and promulgate all rules and regulations necessary for the enforcement and implementation of the provisions of this act and all applicable federal rules and regulations.

History. Acts 1979, No. 324, §§ 1, 2; A.S.A. 1947, §§ 11-1410, 11-1411.

Publisher's Notes. Acts 1979, No. 324, § 1, provided, in part, that the Department of Veterans' Affairs should assume

all duties and responsibilities of assisting veterans and their dependents and survivors in securing their rights and benefits formerly held by the Arkansas Veterans' Service Office.

Meaning of “this act”. Acts 1979, No. 324, codified as §§ 20-81-102 — 20-81-109, 25-15-202, 26-52-401.

20-81-103. Department of Veterans Affairs — Appointment of director — Employees.

(a) The Governor is authorized to appoint a qualified Director of the Department of Veterans Affairs who shall have served in the United States Armed Forces during armed conflict as set forth by the United States Congress, who has been honorably discharged therefrom, and who shall have been a resident of the State of Arkansas for two (2) years preceding his or her appointment.

(b) The director shall promote and supervise the dissemination of all available information concerning the rights of all veterans and their dependents.

(c) The director may establish, maintain, and operate district offices within the State of Arkansas as may be necessary.

(d) The director is authorized to employ an assistant director and such other employees, full-time or part-time, as may be determined necessary, subject to approval of the Governor and within the limits of the funds appropriated therefor.

(e)(1) A veterans' claims specialist shall have served in the United States Armed Forces and shall have been honorably discharged therefrom.

(2) All veterans' claims specialists of the Department of Veterans Affairs shall familiarize themselves with all laws, both federal and state, relating to rights and benefits of all veterans and their dependents and shall aid and assist all veterans and their dependents in securing their rights and benefits.

(f)(1) All employees under the supervision of the department shall not for themselves accept, receive, or charge any money, article, or thing of value for the performing of any service rendered to any veteran or his or her dependents at any time or in any manner.

(2) Any person who shall violate the provisions of this subsection shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500), or imprisoned not less than thirty (30) days nor more than six (6) months, or both.

History. Acts 1979, No. 324, §§ 3, 4, 7, 8, 12; A.S.A. 1947, §§ 11-1412, 11-1413, 11-1416, 11-1417, 11-1421; Acts 1993, No. 719, § 1; 2017, No. 387, §§ 1, 2.

Amendments. The 2017 amendment, in (c), deleted “shall maintain his or her office in space provided by the United States Department of Veterans Affairs Re-

gional Benefit Office Building in Little Rock, Arkansas, and” preceding “may establish” and substituted “district offices” for “such other offices”; and, in (e)(1), substituted “A” for “All”, deleted “during armed conflict, as set forth by Congress” following “Armed Forces”, and deleted the former second sentence.

20-81-104. Arkansas Veterans' Commission.

(a) The Arkansas Veterans' Commission is established to:

(1) Serve as the advisory body for the Director of the Department of Veterans Affairs;

(2) Serve as a liaison between the Department of Veterans Affairs and a chartered nonprofit veterans organization in this state, including without limitation the:

(A) American Legion;

(B) Department of Arkansas, Veterans of Foreign Wars of the United States;

(C) Disabled American Veterans; and

(D) Arkansas Veteran's Coalition, Inc.;

(3) Promote and advance the interests of Arkansas veterans by meeting and acting as an advisory board to the General Assembly on all matters affecting Arkansas veterans, their dependents, and survivors, including without limitation by meeting with the members of the House Legislative, Military and Veterans Affairs Permanent Subcommittee of the House Committee on Aging, Children and Youth, Legislative and Military Affairs; and

(4) Gather information and data to help improve the operation and efficiency of the Veterans' Home established under § 20-81-105 and a state veterans' cemetery established under § 20-81-112 by consulting with and coordinating with veterans' commissions in other states.

(b)(1) The Arkansas Veterans' Commission shall be composed of fifteen (15) members, who shall be appointed by the Governor and confirmed by the Senate.

(2) Members of the Arkansas Veterans' Commission shall serve for five-year overlapping terms.

(3) The Arkansas Veterans' Commission shall annually elect its chair from among its membership.

(4)(A) Members of the Arkansas Veterans' Commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

(B)(i) Members of the Arkansas Veterans' Commission are also authorized to attend conventions, conferences, or meetings of recognized veterans' organizations, herein defined as veterans' organizations listed in the current United States Department of Veterans Affairs Directory of Veterans and Military Service Organizations as meeting the criteria of 38 C.F.R. § 14.628, and are entitled to reimbursement for expenses incurred in attending those conventions, conferences, or meetings in accordance with procedures and limits prescribed by law or regulation for state employees.

(ii) However, a member of the Arkansas Veterans' Commission shall not be entitled to reimbursement of the expenses authorized in subdivision (b)(4)(B)(i) of this section unless the reimbursement is approved in advance by the Chair of the Arkansas Veterans' Commission and the director.

(C)(i) A member of the Arkansas Veterans' Commission shall not receive more than one thousand dollars (\$1,000) during any fiscal year for stipends and reimbursement of expenses incurred as a member of the Arkansas Veterans' Commission unless:

(a) Another member of the Arkansas Veterans' Commission claims less than one thousand dollars (\$1,000) in stipends and reimbursement of expenses during the fiscal year; and

(b) The chair, subject to the approval of the director, authorizes the transfer of the unclaimed funds authorized by subdivision (b)(4)(C)(i)(a) of this section to another member of the Arkansas Veterans' Commission to be used for stipends and reimbursement expenses incurred over the authorized one thousand dollars (\$1,000).

(ii) However, a member of the Arkansas Veterans' Commission shall not receive more than two thousand five hundred dollars (\$2,500) in stipends and reimbursement of expenses in any fiscal year.

(c) The Arkansas Veterans' Commission shall make recommendations to the director for the operation and improvement of the efficiency of the Veterans' Home established under § 20-81-105 and a state veterans' cemetery established under § 20-81-112.

(d) Quarterly meetings of the Arkansas Veterans' Commission are authorized at the call of the chair.

History. Acts 1979, No. 324, § 13; A.S.A. 1947, § 11-1422; Acts 1991, No. 670, § 1; 1993, No. 136, § 1; 1997, No. 250, § 210; 1999, No. 634, § 1; 2017, No. 388, § 1.

Publisher's Notes. The terms of members of the Task Force on Veteran's Affairs are staggered so that three (3) terms expire every year.

Amendments. The 2017 amendment

deleted "serve as an advisory agency to the Veterans' Home" in the introductory language of (a); added (a)(1) through (a)(4); redesignated former (b)(4)(B) as present (b)(4)(B)(i); added (b)(4)(B)(ii); rewrote and redesignated former (b)(4)(C) as (b)(4)(C)(i); added present (b)(4)(C)(ii); redesignated former (c)(1) as (c); and deleted former (c)(2).

20-81-105. Veterans' Home.

(a) The Department of Veterans Affairs is authorized to establish and maintain a Veterans' Home at a location selected by the Director of the Department of Veterans Affairs, after seeking advice from the Arkansas Veterans' Commission, and the Arkansas Veterans' Home Task Force [abolished].

(b) The department is authorized to employ staff to operate the home as it deems appropriate and as authorized by biennial appropriation.

(c)(1) The home shall be operated under the supervision of the department.

(2) The director shall be the administrative head of the home.

(d)(1) The department shall promulgate appropriate guidelines for determining eligibility of veterans for admission to the home and the monetary charges to be made for veterans residing in the home. All guidelines shall conform to the federal requirements to qualify the

home as a nursing home for veterans and to render the home eligible to receive federal financial assistance.

(2)(A) Notwithstanding the provisions of § 20-8-101 et seq., the home may be used as a nursing home for veterans without obtaining a certificate of need.

(B) Bed capacity shall not exceed one hundred fifty (150).

(e) In the administration of the home, the director is authorized to do the following:

(1) Establish accounts to record the receipt and disbursement of funds from resident veterans to pay for a portion of their maintenance at the home;

(2) Develop policies for determining charges to be made to resident veterans;

(3) Develop accounts and procedures pertaining to incompetent residents;

(4) Establish procedures and accounts for payment by the home to its residents for work performed at the home;

(5) Establish such other accounts as are necessary to the orderly administration of the home; and

(6) Establish policies necessary for the operation of the home.

(f) At the end of each fiscal year, the director shall certify to the Chief Fiscal Officer of the State the amount of nonrevenues to be retained in the Miscellaneous Agencies Fund Account. All other moneys shall be transferred to the General Revenue Allotment Reserve Fund according to existing laws.

History. Acts 1979, No. 324, §§ 5, 6; 1985, No. 432, § 1; A.S.A. 1947, §§ 11-1414, 11-1415; Acts 1987, No. 157, § 2; 1987, No. 202, § 10; 1989 (1st Ex. Sess.), No. 217, § 10; 1999, No. 634, § 2; 2013, No. 165, § 1.

A.C.R.C. Notes. Identical Acts 2016, Nos. 242 and 270, § 6, provided: "FUNDING TRANSFER. The Office of Attorney General shall deposit or transfer by check from time to time the sum of two million two hundred and seventy-two thousand three hundred and seventy-seven dollars (\$2,272,377) from unobligated cash funds received from court orders or settlement agreements for deposit to cash funds deposited in the State Treasury as determined by the Chief Fiscal Officer of the State for the Department of Veterans' Affairs for startup costs, construction, personal services and operating expenses associated with the North Little Rock Veterans' Home."

Publisher's Notes. Acts 1987, No. 157, § 1 provided that: "The General Assembly intended, through Acts 432 of 1985, Acts 578 of 1985 and Act 175 of 1985, to provide

for the conversion of the Arkansas Veterans Home to a nursing home and domiciliary for veterans without the necessity of obtaining a certificate of need. However, there still appears to be confusion regarding whether the Veterans Home must obtain a certificate of need in order to convert to a nursing home, and it is the intent of the General Assembly through this Act to make more clear its intent to authorize and direct the conversion of the Arkansas Veterans Home to a nursing home and domiciliary without obtaining a certificate of need. Therefore, this Act shall be interpreted and construed in whatever manner necessary to provide for the conversion without obtaining a certificate of need."

Amendments. The 2013 amendment rewrote (a); deleted "may be" preceding "authorized" in (b); substituted "director" for "Director of the Department of Veterans' Affairs" in (c)(2); in (d)(1), deleted "which must be met" preceding "to qualify" and "and domiciliary" following "nursing home" in the second sentence; in (d)(2)(A), substituted "used as" for "converted to", deleted "and domiciliary" pre-

ceding "for veterans" and deleted "therefor" at the end; rewrote (d)(2)(B); in the introductory language of (e), substituted "administration" for "administering" and deleted "specifically" preceding "authorized"; deleted "of the home" at the end of (e)(3); and in (f), substituted "At the end of

each fiscal year, the director shall" for "The director shall, at the end of each fiscal year" in the first sentence, and "according to" for "in accordance with" in the second sentence.

Cross References. State funds and accounts, § 19-5-201 et seq.

20-81-106. County programs.

(a)(1) The Department of Veterans Affairs is authorized to establish, implement, and maintain a program for providing financial assistance to the counties to assist the counties in paying the salaries and expenses of county veterans' service officers.

(2) Any program established and maintained by the Department of Veterans Affairs shall provide for financial assistance to applying counties on the basis of one dollar (\$1.00) of state funds for each two dollars (\$2.00) of county funds provided for the payment of the salary and expenses of the particular veterans' service officer of the applying county.

(3) No county shall receive financial assistance under the provisions of this act in excess of three thousand six hundred dollars (\$3,600) in any fiscal year. However, the financial assistance to counties under this section may be increased to a maximum of four thousand eight hundred dollars (\$4,800) per year for those counties wherein the veteran population exceeds two thousand five hundred (2,500) veterans as reflected by the latest United States Department of Veterans Affairs report on veteran population.

(4) Assistance grants pursuant to this section may be made only to those counties employing a county veterans' service officer who meets the training and testing qualifications, scheduled number of work hours per month, and other qualifications prescribed by the Department of Veterans Affairs for county veterans' service officers.

(b)(1) The county veterans' service officers shall serve at the pleasure of the individual incumbent county judge in his or her respective county.

(2) However, supervision, training, and testing of county veterans' service officers shall be the responsibility of the Department of Veterans Affairs.

History. Acts 1979, No. 324, § 11; A.S.A. 1947, § 11-1420; Acts 1989 (1st Ex. Sess.), No. 217, § 7.

Meaning of "this act". See note to § 20-81-102.

20-81-107. Gifts, volunteer services, etc.

(a) The Director of the Department of Veterans Affairs is authorized to arrange for and accept through such mutual arrangement as may be made the volunteer services, equipment, gifts, facilities, properties, supplies, and personnel of any state, county, and municipal offices and

agencies and of veterans' fraternal, welfare, civic, and service organizations in the furtherance of the purposes of this act.

(b) The director may accept on behalf of the Department of Veterans Affairs from any natural person or legal entity the donation of real property for use as a cemetery for the interment of Arkansas veterans of the United States Armed Forces and their immediate next of kin as defined by the department.

(c) The director may accept on behalf of the department from any source the donation of gifts, grants, cash, bequeaths, real or personal property, and equipment for the establishment, construction, maintenance, and operations of any state-owned and operated Veterans' Home.

History. Acts 1979, No 324, § 9; 1985, No. 431, § 1; A.S.A. 1947, §§ 11-1418, 11-1423; Acts 2013, No. 988, § 4. **Meaning of "this act".** See note to § 20-81-102.

Amendments. The 2013 amendment added (c).

20-81-108. Action by municipal governing bodies.

(a) County quorum courts, city councils, and other municipal governing bodies are authorized to appropriate money for the purpose of maintaining county and municipal offices jointly with the Department of Veterans Affairs, on either a full-time or part-time basis.

(b) All offices shall be under the supervision of the Director of the Department of Veterans Affairs, and all work of the offices shall be coordinated with the department.

History. Acts 1979, No. 324, § 10; A.S.A. 1947, § 11-1419.

20-81-109. Cooperation of other state agencies.

It shall be the duty of all state, county, and municipal offices and agencies legally concerned with and interested in the welfare of veterans and their dependents to cooperate with the Department of Veterans Affairs in carrying out the purposes of this act.

History. Acts 1979, No. 324, § 9; A.S.A. 1947, § 11-1418. **Meaning of "this act".** See note to § 20-81-102.

20-81-110. [Repealed.]

Publisher's Notes. This section, concerning the official flower of World War veterans, was repealed by Acts 2013, No. 1145, § 6. The section was derived from Acts 1939, No. 189, §§ 1-3; A.S.A. 1947, §§ 11-1708 — 11-1710.

20-81-111. Entitlement of all veterans to privileges.

The soldiers, sailors, and Marines who were disabled in military service during the World Wars, Korean War, and Vietnam War and the dependents of the soldiers, sailors, and Marines are entitled to the same privileges as are now enjoyed by all other veterans.

History. Acts 1959, No. 423, § 1; 1973, No. 251, § 1; A.S.A. 1947, § 11-1711.

20-81-112. State veterans' cemetery system.

(a) The Department of Veterans Affairs is authorized to establish and maintain a state veterans' cemetery system to serve the veterans, spouses, and eligible dependents of the veterans of Arkansas.

(b) The department may:

- (1) Employ staff to operate the cemetery system; and
- (2) Charge a fee for each interment of an eligible spouse or dependent of a veteran not to exceed three hundred dollars (\$300).

(c) The department shall:

- (1) Promulgate appropriate guidelines for determining eligibility for burial;
- (2) Establish accounts as are necessary to the orderly administration of the cemetery system;
- (3) Develop plans and programs which will provide for initial establishment of sites to meet the greatest need and provide for their orderly expansion; and
- (4) Make applications to federal agencies such as the United States Department of Veterans Affairs and receive federal funding as is available to establish and operate this cemetery system.

History. Acts 1997, No. 235, § 1; 2014, No. 262, § 12.

Amendments. The 2014 amendment redesignated part of former (b) as (b)(1); substituted "may" for "is authorized" in

the introductory language of (b); in (b)(1), substituted "the" for "this" and "and" for "as it deems appropriate and as may be authorized by biennial appropriation"; and added (b)(2).

20-81-113. Uniform data collection system.

(a) The Department of Veterans Affairs may establish a uniform data collection system to locate veterans and military families to determine need and direct appropriate services to veterans and military families in this state.

(b)(1) All instrumentalities of state government shall:

- (A) Cooperate with the department to implement the system;
- (B) Supply the information requested by the department to implement the system; and
- (C) Ask each applicant for, and recipient of, government services if he or she has ever served in the United States Armed Forces.

(2) If an applicant for, or a recipient of, government services states that he or she has served in the United States Armed Forces, the instrumentality of state government shall:

(A) Attempt to collect all information requested by the department to be collected; and

(B) Provide the information obtained to the department.

(c) The department shall promulgate rules to implement this section.

History. Acts 2017, No. 807, § 1.

CHAPTER 82

VICTIMS OF VIOLENT CRIMES

SUBCHAPTER.

1. GENERAL PROVISIONS. [RESERVED.]
2. ARKANSAS CHILD ABUSE/RAPE/DOMESTIC VIOLENCE COMMISSION.

SUBCHAPTER 1 — GENERAL PROVISIONS

[Reserved.]

SUBCHAPTER 2 — ARKANSAS CHILD ABUSE/RAPE/DOMESTIC VIOLENCE COMMISSION

SECTION.

- 20-82-201. Arkansas Child Abuse/Rape/Domestic Violence Commission — Creation — Members.
- 20-82-202. Arkansas Child Abuse/Rape/Domestic Violence Commission — Powers and duties.
- 20-82-203. [Repealed.]
- 20-82-204. Arkansas Child Abuse/Rape/Domestic Violence Commission — Costs and expenses.
- 20-82-205. Child Abuse/Rape/Domestic Violence Section — Creation.
- 20-82-206. Child Abuse/Rape/Domestic Violence Section — Powers and duties.

SECTION.

- 20-82-207. Child Abuse/Rape/Domestic Violence Section — Budget — Staff.
- 20-82-208. Community Grants for Child Safety Centers Program — Findings — Purpose.
- 20-82-209. Multidisciplinary teams — Protocols created — Responsibilities — Definition.
- 20-82-210. Subcommittee on Child Safety Centers — Members — Duty to oversee child safety centers.

Effective Dates. Acts 1991, No. 727, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Child Abuse/Rape/Domestic Violence Commission created by this Act should go into

effect on July 1, 1991; and that unless this emergency clause is adopted this Act may not go into effect until after July 1. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public

peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1991, No. 828, § 9: July 1, 1991. Emergency clause provided: "It is hereby found and determined by the General Assembly that the Child Abuse/Rape/Domestic Violence Commission created by this Act should go into effect on July 1, 1991; and that unless this emergency clause is adopted this Act may not go into effect until after July 1. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 1991."

Acts 1993, No. 887, § 11: Apr. 5, 1993. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential that the transfer of the Arkansas Child Abuse/Rape/Domestic Violence Commission to the office of Chancellor of the University of Arkansas for Medical Sciences be effected on July 1; that it is essential that the removal of the cap on the operating budget of the Commission for the 1991-93 biennium be removed immediately; and that this act should be given effect immediately to permit a smooth transition under this act and to remove the Commission's operating budget cap. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval."

Acts 1995, No. 1336, § 11: July 1, 1995. Emergency clause provided: "It is hereby found and determined by the General Assembly that it is essential for the effective of administration of state government this act is necessary immediately. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect on and after July 1, 1995."

Acts 1997, No. 250, § 258: Feb. 24, 1997. Emergency clause provided: "It is hereby found and determined by the General Assembly that Act 1211 of 1995 established the procedure for all state boards and commissions to follow regarding reimbursement of expenses and stipends for board members; that this act amends various sections of the Arkansas Code

which are in conflict with the Act 1211 of 1995; and that until this cleanup act becomes effective conflicting laws will exist. Therefore an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

Acts 2001, No. 1631, § 3: July 1, 2001. Emergency clause provided: "It is found and determined by the General Assembly, that the effectiveness of this act on July 1, 2001 is essential to the continued operations of the existing Child Advocacy Centers, and that in the event of an extension of the Regular Session, the delay in the effective date of this act beyond July 1, 2001 could work irreparable harm upon the proper administration and provision of essential government support of Child Advocacy Centers. Therefore, an emergency is declared to exist and this act being necessary for the immediate preservation of the public peace, health and safety shall be in full force and effect from and after July 1, 2001."

Acts 2001, No. 1786, § 5: Apr. 19, 2001. Emergency clause provided: "It is found and determined by the Eighty-third General Assembly that immediate clarification is needed with regard to the authority to administer funds provided to the State of Arkansas under the federal Victims of Crime Act, the Violence Against Women Act, and the Family Violence Prevention and Services Act; and that this act, in order to comply with federal law, removes state legislative restrictions on the administration of such funds where the federal government has previously enacted legislation or regulations governing the authority to administer these funds. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of

time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-82-201. Arkansas Child Abuse/Rape/Domestic Violence Commission — Creation — Members.

(a) There is created the Arkansas Child Abuse/Rape/Domestic Violence Commission, to be composed of twenty-two (22) persons appointed by the Governor for five-year staggered terms and until the successor is appointed and qualified.

(b) The membership of the commission shall consist of the following:

(1) A representative of domestic violence programs or domestic violence service providers in Arkansas;

(2) A representative of the Department of Arkansas State Police;

(3) A physician specializing in the treatment of child abuse;

(4) A prosecuting attorney;

(5) A defense attorney;

(6) A representative of the Division of Children and Family Services of the Department of Human Services;

(7) A representative of a parents' group;

(8) A mental health professional specializing in the treatment of child abuse or domestic violence or rape;

(9) A representative of city or county law enforcement;

(10) A representative of children with disabilities;

(11) A judge involved in criminal court proceedings related to child abuse and neglect;

(12) A judge involved in civil court proceedings related to child abuse and neglect;

(13) A representative of the State Crime Laboratory;

(14) A representative of the Department of Health;

(15) A representative of rape crisis centers;

(16) A representative of the office of the Attorney General;

(17) Three (3) members at large;

(18) A court-appointed special advocate representative;

(19) An attorney ad litem; and

(20) A faculty member from a four-year college or university with experience in the study of human trafficking or a closely related area of study.

(c) Members of the commission may receive expense reimbursement in accordance with § 25-16-901 et seq.

History. Acts 1991, No. 727, §§ 1, 3; 1991, No. 828, §§ 1, 3; 1993, No. 175, § 1; 1993, No. 887, § 3; 1995, No. 1336, § 1; 1997, No. 250, § 211; 2001, No. 1285, § 1; 2001, No. 1288, § 19; 2015, No. 1138, § 5; 2017, No. 264, § 6; 2017, No. 540, § 51.

A.C.R.C. Notes. Acts 2017, No. 264,

§ 7, provided: "CONSTRUCTION AND LEGISLATIVE INTENT. It is the intent of the General Assembly that:

"(1) The enactment and adoption of this act shall not expressly or impliedly repeal an act passed during the regular session of the Ninety-First General Assembly;

“(2) To the extent that a conflict exists between an act of the regular session of the Ninety-First General Assembly and this act:

“(A) The act of the regular session of the Ninety-First General Assembly shall be treated as a subsequent act passed by the General Assembly for the purpose of:

“(i) Giving the act of the regular session of the Ninety-First General Assembly its full force and effect; and

“(ii) Amending or repealing the appropriate parts of the Arkansas Code of 1987; and

“(B) Section 1-2-107 shall not apply; and

“(3) This act shall make only technical, not substantive, changes to the Arkansas Code of 1987.”

Pursuant to Acts 2017, No. 264, § 7, the amendment of this section by Acts 2017, No. 540, § 51, supersedes the amendment of this section by Acts 2017, No. 264, § 6, which amended subsection (b) of this sec-

tion to delete (b)(16) and redesignate the remaining subdivisions accordingly.

Amendments. The 2015 amendment, in (a), deleted “hereby” preceding “created” and substituted “thirty (30)” for “twenty-five (25)”; and added (b)(26) through (28).

The 2017 amendment by No. 540, in (a), substituted “twenty-two (22)” for “thirty (30)” and “five-year” for “two-year”; deleted “who is a member of the Arkansas Prosecuting Attorneys Association” at the end of (b)(4); deleted former (b)(6) through (b)(8), (b)(12), (b)(20), (b)(25), (b)(27), and (b)(28) and redesignated the remaining subdivisions accordingly; substituted “A judge involved in criminal court proceedings related to child abuse and neglect” for “A district judge or circuit judge” in (b)(11); substituted “A judge involved in civil court proceedings related to child abuse and neglect” for “A chancery judge” in present (b)(12); and substituted “An attorney” for “A guardian” in (b)(19).

20-82-202. Arkansas Child Abuse/Rape/Domestic Violence Commission — Powers and duties.

The Arkansas Child Abuse/Rape/Domestic Violence Commission shall be an advisory body only and shall act in an advisory capacity to the Child Abuse/Rape/Domestic Violence Section of the office of the Chancellor of the University of Arkansas for Medical Sciences.

History. Acts 1991, No. 727, § 2; 1991, No. 828, § 2; 1993, No. 887, § 4; 1995, No. 1336, § 2.

20-82-203. [Repealed.]

Publisher’s Notes. This section, concerning disbursement of funds, was repealed by Acts 2001, No. 1285, § 2 and

Acts 2001, No. 1786, § 3. The section was derived from Acts 1991, No. 727, § 4; 1991, No. 828, § 4; 1995, No. 1336, § 3.

20-82-204. Arkansas Child Abuse/Rape/Domestic Violence Commission — Costs and expenses.

The administrative and associated operating costs and expenses of the Arkansas Child Abuse/Rape/Domestic Violence Commission may be paid from and administered through the normal contractual processes of the University of Arkansas for Medical Sciences.

History. Acts 1991, No. 948, § 1; 1993, No. 887, § 6; 1995, No. 1336, § 4.

20-82-205. Child Abuse/Rape/Domestic Violence Section — Creation.

There is hereby created the Child Abuse/Rape/Domestic Violence Section within the office of the Chancellor of the University of Arkansas for Medical Sciences.

History. Acts 1993, No. 887, § 1; 1995, No. 1336, § 5.

20-82-206. Child Abuse/Rape/Domestic Violence Section — Powers and duties.

The Child Abuse/Rape/Domestic Violence Section shall have the authority and responsibility to:

(1) Administer and disburse funds received through the Children's Justice Act, Pub. L. No. 99-401, rape funds received through the preventive health services block grant, and any other federal and grant funds;

(2) Receive and expend grants, donations, and funds from public and private sources to carry out its responsibilities;

(3) Educate professionals, law enforcement officers, prosecuting attorneys, trial and appellate judges, district judges, Department of Human Services employees, and other victim service providers regarding issues, interventions, and other matters associated with child abuse, rape, and domestic violence;

(4) Research, develop, and disseminate resource materials as needed;

(5) Facilitate the development of and contract with local multidisciplinary teams throughout the state, the purpose of which is to provide coordinated investigation and service delivery to child victims of severe maltreatment;

(6) Authorize local multidisciplinary teams throughout the state to review instances of child deaths involving children ages birth through seventeen (17) years of age;

(7) Provide support, coordination, and technical assistance to providers of services for rape, domestic violence, and child abuse victims;

(8) Develop a database for use in Arkansas which addresses information about the effectiveness of treatment programs and other intervention efforts in the areas of domestic violence, child abuse, child sexual abuse, and rape and which focuses on interventions with victims, families, and perpetrators;

(9) Advise the Governor as to the immediate needs and priorities surrounding the issues of child abuse, domestic violence, and rape;

(10) Contract and be contracted with;

(11) Provide consultation and technical assistance to professionals regarding child abuse, rape, and domestic violence;

(12) Work with the Area Health Education Center Program of the University of Arkansas for Medical Sciences to research, develop, and disseminate resource materials for regions in the state; and

(13) Facilitate and collaborate with professionals regarding human trafficking.

History. Acts 1993, No. 887, § 2; 1995, No. 1336, § 6; 2001, No. 1285, § 3; 2015, No. 1138, § 6.

Amendments. The 2015 amendment added (13).

U.S. Code. The Children's Justice Act,

referred to in this section, is codified as 34 U.S.C. §§ 20101, 20103, 20104, 41302, 42 U.S.C. §§ 290dd-3 [omitted], 290ee-3 [omitted], 5101, 5103 [repealed], and 5105.

20-82-207. Child Abuse/Rape/Domestic Violence Section — Budget — Staff.

The Child Abuse/Rape/Domestic Violence Section shall consist of such staff and shall operate within such budget as may be authorized by the appropriation of federal funds by the General Assembly.

History. Acts 1993, No. 887, §§ 5, 7; 1995, No. 1336, § 7.

20-82-208. Community Grants for Child Safety Centers Program — Findings — Purpose.

(a) FINDINGS AND PURPOSE.

(1) The General Assembly finds and determines that:

(A) Abused children often have to describe their sexual or physical abuse several times to different professionals at different locations;

(B) Many child abuse investigations are conducted with little collaboration between the agencies involved in the cases;

(C) Each agency's child abuse professionals are housed in different facilities and, as a result, interface during the investigation and management of cases is limited;

(D) Sexual and physical abuse medical examinations are commonly performed in hospital emergency rooms and other sites that are frightening to children, lack the proper equipment, and often are staffed by physicians uncomfortable with these exams; and

(E) Child safety centers provide:

(i) A more child-friendly atmosphere;

(ii) Reduced trauma to the children and their families;

(iii) Improved investigations and management;

(iv) More effective utilization of multiagency information;

(v) Greater protection of children;

(vi) Increased prosecution of perpetrators; and

(vii) Less unnecessary family intervention.

(2) The purpose of this section is to encourage the use of existing child safety centers and the development of new centers providing the benefits under one roof.

(b) ESTABLISHMENT AND AUTHORITY.

(1) There is established the Community Grants for Child Safety Centers Program.

(2) The Arkansas Child Abuse/Rape/Domestic Violence Commission shall advise the Child Abuse/Rape/Domestic Violence Section on the administration and monitoring of this grant program for the operation of existing child safety centers and the development of new centers in the State of Arkansas.

History. Acts 2001, No. 1631, §§ 1, 2; 2007, No. 703, § 17; 2009, No. 952, § 18.

20-82-209. Multidisciplinary teams — Protocols created — Responsibilities — Definition.

(a) As used in this section, “multidisciplinary team” means a local team operating under a statewide model protocol developed by the Arkansas Child Abuse/Rape/Domestic Violence Commission governing the roles, responsibilities, and procedures of the multidisciplinary team.

(b) The commission shall:

(1)(A) Prepare and issue a statewide model protocol for local multidisciplinary teams regarding investigations of child abuse and the provision of safety and services to victims of child abuse, which may include child victims of human trafficking.

(B) The statewide model protocol shall describe coordinated investigation or coordinated services, or both, of state and local law enforcement, the Department of Human Services, and medical, mental health, and child safety centers; and

(2) Review and approve a protocol prepared by each local multidisciplinary team.

(c) Each multidisciplinary team shall:

(1) Develop a protocol consistent with the statewide model protocol issued by the commission; and

(2) Submit the protocol to the commission for review and approval.

History. Acts 2007, No. 703, § 18; added “which may include child victims of human trafficking” in (b)(1)(A). 2009, No. 952, § 19; 2015, No. 1138, § 7.

Amendments. The 2015 amendment

20-82-210. Subcommittee on Child Safety Centers — Members — Duty to oversee child safety centers.

(a) The Arkansas Child Abuse/Rape/Domestic Violence Commission shall establish the Subcommittee on Child Safety Centers.

(b) The subcommittee shall consist of seven (7) members appointed as follows:

(1) Three (3) members appointed by the commission; and

(2) Four (4) members appointed by the Arkansas Legislative Task Force on Abused and Neglected Children.

(c) The subcommittee shall oversee the operations of the child safety centers with regard to child abuse.

History. Acts 2007, No. 703, § 18.

CHAPTER 83

ARKANSAS FARMERS' MARKET NUTRITION
PROGRAM ACT

SECTION.	SECTION.
20-83-101. Title.	20-83-105. Nutrition education.
20-83-102. Purpose.	20-83-106. Farmer or vendor participation.
20-83-103. Definitions.	
20-83-104. Coupon administration.	20-83-107. Rules and regulations.

Effective Dates. Acts 1993, No. 1218, § 11: Apr. 19, 1993. Emergency clause provided: “It is hereby found and determined that certain individuals and families are nutritionally at risk due to a lack of fresh unprocessed food such as fruits and vegetables; that these foods are vital to the health, welfare and safety of the people of this state and a program providing these essential nutrients is necessary; this act will provide essential nutrition to

these individuals described herein and those needs will not be properly met until this program is in effect; and that the immediate passage of this act is necessary to accomplish the purpose stated herein. Therefore, an emergency is declared to exist and this act, being necessary for the immediate preservation of the public peace, health and safety, shall be in full force and effective from and after the date of its passage and approval.”

20-83-101. Title.

This subchapter shall be known and may be cited as the “Arkansas Farmers’ Market Nutrition Program Act”.

History. Acts 1993, No. 1218, § 1.

20-83-102. Purpose.

This subchapter is to establish the Arkansas Farmers’ Market Nutrition Program as a state-supported and state-funded program eligible to receive additional support and funding from any federal, public, or private resource for the following purposes:

(1) To provide nutritionally at-risk individuals and families nutrition education and fresh, locally grown fruits, nuts, and vegetables; and

(2) To expand public awareness and stimulate individual use of farmers’ markets to increase the purchase of locally grown foods, thereby reducing the negative environmental impact of food packaging and shipping while enhancing a beneficial economic and social climate in the community.

History. Acts 1993, No. 1218, § 2.

20-83-103. Definitions.

As used in this subchapter:

(1) "ArFMNP" means the Arkansas Farmers' Market Nutrition Program; and

(2) "Coupon" means a nontaxable nutrition supplement coupon issued and distributed by the program for redeeming locally grown foods as provided by this subchapter.

History. Acts 1993, No. 1218, § 3.

20-83-104. Coupon administration.

The Department of Health shall administer the Arkansas Farmers' Market Nutrition Program and shall establish the methods and procedures for selecting sites and issuing, distributing, and redeeming nontaxable nutrition supplement coupons pursuant to the following criteria:

(1) Coupons shall be distributed to optimize benefits to the greatest number of nutritionally at-risk individuals and families;

(2) Recipients shall receive coupons in an amount not less than ten dollars (\$10.00) per year and not in excess of twenty dollars (\$20.00) per year;

(3) Farmers' markets and farmers or vendors are targeted to optimize the economic benefits to small farmers; and

(4) The program operates in compliance with all federal Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Farmers' Market Nutrition Program criteria, including providing for administrative costs and assurances of civil rights and equal employment opportunity.

History. Acts 1993, No. 1218, § 4.

20-83-105. Nutrition education.

Nutrition education, including nutritional value, food preparation, storage, and safety, shall be provided for recipients by a collaborative effort between the Department of Health and the University of Arkansas Cooperative Extension Service.

History. Acts 1993, No. 1218, § 5.

20-83-106. Farmer or vendor participation.

(a) To qualify for redemption of the nutrition supplement coupons, all farmers or vendors shall be Arkansas producers or shall represent Arkansas producers trained by the University of Arkansas Cooperative Extension Service to participate in the Arkansas Farmers' Market Nutrition Program.

(b) All produce exchanged for nutrition supplement coupons shall be fresh and unprocessed fruits, vegetables, or nuts grown in Arkansas.

History. Acts 1993, No. 1218, § 6.

20-83-107. Rules and regulations.

To the extent that funds are available, the Department of Health is authorized to enforce this subchapter and to promulgate necessary rules and regulations to implement this subchapter.

History. Acts 1993, No. 1218, § 7.

CHAPTER 84
ARKANSAS WOMEN’S COMMISSION

SECTION.
20-84-101 — 20-84-103. [Repealed.]

20-84-101 — 20-84-103. [Repealed.]

Publisher’s Notes. This chapter, concerning the Arkansas Women’s Commission, was repealed by Acts 1999, No. 661, §§ 1-3. The chapter was derived from the following sources:

- 20-84-101. Acts 1997, No. 699, § 1.
- 20-84-102. Acts 1997, No. 699, § 2.
- 20-84-103. Acts 1997, No. 699, § 3.

CHAPTER 85
MATERNAL DRUG ADDICTION

SECTION.
20-85-101. Family Treatment and Rehabilitation Program for Ad-

dicted Women and their Children.

20-85-101. Family Treatment and Rehabilitation Program for Addicted Women and their Children.

- (a) There is hereby created the Family Treatment and Rehabilitation Program for Addicted Women and their Children within the University of Arkansas for Medical Sciences.
- (b) The program shall:
 - (1) Develop a statewide program of treatment, rehabilitation, prevention, intervention, and relevant research for families affected by maternal addiction by coordinating existing health services, human services, and education and employment resources;
 - (2) Develop resources for local treatment and rehabilitation programs for families affected by maternal addiction by providing policy research, technical assistance, and evaluation of program outcomes;
 - (3) Identify gaps in service delivery to families affected by maternal addiction and propose solutions;
 - (4) Enter into contracts for the delivery of services under the program;

(5) Solicit, accept, retain, and administer gifts, grants, or donations of money, services, or property for the administration of the program; and

(6) Provide centralized billing for providers who agree to provide a comprehensive array of specialized coordinated services under or through the program.

(c) The program shall report quarterly to the Subcommittee on Children and Youth of the House Committee on Aging, Children and Youth, Legislative and Military Affairs and the Senate Committee on Children and Youth.

History. Acts 1997, No. 964, § 1.

CHAPTER 86

FAMILY SAVINGS INITIATIVE ACT

SECTION.

20-86-101. Title.

20-86-102. Declaration.

20-86-103. Purpose.

20-86-104. Definitions.

20-86-105. Proposals.

20-86-106. Individual development account.

20-86-107. Individual development account — Purpose.

SECTION.

20-86-108. Penalty.

20-86-109. Matching funds.

20-86-110. Effect on other programs.

20-86-111. Reporting requirements.

20-86-112. Implementation.

20-86-113. Reports — Recommendations.

Effective Dates. Acts 1999, No. 1217, § 16: July 1, 1999.

Acts 1999, No. 1217, § 20: Apr. 7, 1999.
Emergency clause provided: "It is hereby found and determined by the Eighty-second General Assembly that the first individuals to be affected by the two (2) year lifetime limit on Transitional Employment Assistance will soon reach that limit. This act will help those individuals to make the transition from welfare to long-term economic self-sufficiency. Therefore, an emergency is declared to

exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

20-86-101. Title.

This act shall be known and may be cited as the "Family Savings Initiative Act".

History. Acts 1999, No. 1217, § 1.

Meaning of "this act". Acts 1999, No.

1217, codified as § 19-5-999, § 20-86-101 et seq., and § 26-51-404(b)(22).

20-86-102. Declaration.

The General Assembly hereby finds that:

(1) Americans of most economic classes are having increasing difficulty climbing the economic ladder. Fully half of all Americans have negligible or no investable assets just as the price of entry to the economic mainstream such as the cost of a house, starting a business, obtaining an adequate education, establishing a retirement account, or purchasing an automobile is increasing;

(2) Economic well-being does not come solely from income, spending, and consumption but also requires savings, investment, and accumulation of assets, since assets can improve economic stability, connect people to a viable and hopeful future, stimulate development of human and other capital, enable people to focus and specialize, yield personal and social dividends, and enhance the welfare of offspring;

(3) There is an urgent need for new means for Americans to navigate the labor market and to provide incentives and means for employment, upgrading, mobility, and retention;

(4) The household savings rate of the United States lags far behind other industrial nations, presenting a barrier to economic growth. The State of Arkansas should develop policies such as individual development accounts that promote higher rates of personal savings and net private domestic investment;

(5) In the current fiscal environment, the State of Arkansas should invest existing resources in high-yielding initiatives. There is reason to believe that the financial returns, including increased income, tax revenue, and decreased welfare cash assistance, of individual development accounts will far exceed the cost of investment;

(6) Hundreds of thousands of Arkansans continue to live in poverty. Poverty is a loss of human resources, an assault on human dignity, and a drain on social and fiscal resources of this state. Traditional public assistance programs concentrating on income and consumption have rarely been successful in promoting and supporting the transition to economic self-sufficiency; and

(7) Income-based social policy should be complemented with asset-based social policy because while income-based policies ensure that consumption needs, including food, child care, rent, clothing, and health care are met, asset-based policies provide the means to achieve economic self-sufficiency and to climb the economic ladder.

History. Acts 1999, No. 1217, § 3.

20-86-103. Purpose.

The purpose of this act is to provide for the establishment of individual development accounts designed to:

(1) Provide individuals and families with limited means an opportunity to accumulate assets;

(2) Facilitate and mobilize savings;

- (3) Promote home ownership, microenterprise development, education, saving for retirement, and automobile purchase; and
- (4) Stabilize families and build communities.

History. Acts 1999, No. 1217, § 2.

1217, codified as § 19-5-999, § 20-86-101

Meaning of “this act”. Acts 1999, No. et seq., and § 26-51-404(b)(22).

20-86-104. Definitions.

As used in this subchapter:

(1)(A) “Administrative costs” includes, but is not limited to, soliciting matching funds, processing fees charged by the fiduciary organization or financial institution, and traditional overhead costs.

(B) Administrative costs shall be limited to no more than ten percent (10%) of the contract;

(2) “Eligible educational institution” means the following:

(A) An institution described in 20 U.S.C. § 1088(a)(2) or § 1141(a), as such sections are in effect on January 1, 2000;

(B) An area vocational education school, as defined in 20 U.S.C. § 2471(4), subparagraph (C) or subparagraph (D), as the section is in effect on January 1, 2000; and

(C) Any other accredited education or training organization;

(3) “Federal poverty level” means the poverty income guidelines published for a calendar year by the United States Department of Health and Human Services;

(4) “Fiduciary organization” means the organization that will serve as an intermediary between an individual account holder and a financial institution holding account funds. A fiduciary organization shall be a not-for-profit organization described in § 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), as in effect on January 1, 2000;

(5) “Financial institution” means an organization authorized to do business under state or federal laws relating to financial institutions and includes, but is not limited to, a bank, trust company, savings bank, building and loan association, savings and loan company or association, or credit union;

(6) “Individual development account” means an account created pursuant to this subchapter exclusively for the purpose of paying the expenses of an eligible individual or family for the purposes set forth in § 20-86-107;

(7) “Net worth” means the aggregate market value of all assets that are owned in whole or in part by any member of the household, less the obligations or debts of any member of the household;

(8) “Operating costs” includes, but is not limited to, costs of training individual development account participants in economic and financial literacy and individual development account uses, marketing participation, counseling participants, and conducting required verification and compliance activities;

(9) “Postsecondary educational expenses” means:

(A) Tuition and fees required for the enrollment or attendance of an individual development account holder or immediate family member thereof who is a student at an eligible educational institution; and

(B) Fees, books, supplies, and equipment required for courses of instruction for an individual development account holder or immediate family member thereof who is a student at an eligible educational institution;

(10) "Qualified acquisition costs" means:

(A) The costs of acquiring, constructing, or reconstructing a residence to be occupied by an individual development account holder or an immediate family member thereof, including, but not limited to, any usual or reasonable settlement, financing, or other closing costs; and

(B) The costs of acquiring or repairing a motor vehicle to be used by an individual development account holder or an immediate family member thereof, including, but not limited to, any taxes, insurance, or registration costs incurred in acquiring a motor vehicle;

(11) "Qualified business" means any business that does not contravene any law or public policy;

(12) "Qualified business capitalization expenses" means qualified expenditures for the capitalization of a qualified business pursuant to a qualified plan;

(13) "Qualified emergency withdrawals" means a withdrawal by an eligible individual that is a withdrawal of only those funds or a portion of those funds deposited by the individual into the individual development account of the individual and that is permitted by a fiduciary organization on a case-by-case basis in accordance with the rules established by the department;

(14) "Qualified expenditures" means expenditures included in a qualified plan, including, but not limited to, capital, plant, equipment, working capital, and inventory expenses;

(15) "Qualified first-time home buyer" means an individual who has no ownership interest in a principal residence during the three-year period ending on the date of acquisition of the principal residence to which this subchapter applies;

(16) "Qualified plan" means a plan for the operation of a business by an individual development account holder or an immediate family member thereof that:

(A) Is approved by a financial institution or by a nonprofit micro-enterprise program or loan fund, having demonstrated business expertise;

(B) Includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(C) May require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor; and

(17) "Qualified principal residence" means a principal residence within the meaning of section 1034 of the Internal Revenue Code of

1986, 26 U.S.C. § 1034, as in effect on January 1, 2000, of an individual development account holder or an immediate family member thereof, the qualified acquisition costs of which do not exceed the average area purchase price applicable to such residence, determined in accordance with paragraphs (2) and (3) of section 143(e) of the Internal Revenue Code, 26 U.S.C. § 143(e)(2) and (3), as in effect on January 1, 2000.

History. Acts 1999, No. 1217, § 4;
2007, No. 252, § 1.

20-86-105. Proposals.

(a)(1) The Department of Workforce Services shall enter into contracts with one (1) or more fiduciary organizations pursuant to the provisions of this section in such a manner that different regions of the state are served by one (1) or more fiduciary organizations.

(2)(A) An organization based in this state which desires to enter into such a contract shall submit a proposal to the department for the right to be approved as a fiduciary organization.

(B) Proposals shall be made upon forms prescribed by the department and shall contain such information as the department may require.

(b) Organizations' proposals shall be evaluated and contracts awarded by the department on the basis of such items as geographic diversity and an organization's:

(1) Ability to market the project to potential account holders;

(2) Ability to leverage additional matching and operating funds;

(3) Ability to provide safe and secure investments for individual accounts;

(4) Overall administrative capacity, including, but not limited to, the certifications or verifications required to assure compliance with eligibility requirements, authorized uses of the accounts, matching contributions by individuals or businesses, and penalties for unauthorized distributions;

(5) Capacity to provide financial counseling and other related service to potential participants;

(6) Capacity to provide other activities designed to increase the independence of individuals and families through home ownership, small business development, enhanced education and training, saving for retirement, and automobile purchase, or to provide links to such other activities; and

(7) Operating costs.

(c)(1) For each contract entered into pursuant to the provisions of this section, the contract shall begin no later than October 1 of each year.

(2)(A) The fiduciary organization shall use not less than seventy percent (70%) for matching funds and not more than thirty percent (30%) for operating and administrative costs.

(B) Administrative costs shall be limited to ten percent (10%) of the contract.

(d) Responsibilities of a fiduciary organization shall include, but not be limited to, marketing participation, soliciting matching contributions, counseling project participants, conducting basic economic and financial literacy training and individual development account use training for project participants, and conducting required verification and compliance activities.

(e) Neither a fiduciary organization nor an employee of or person associated with a fiduciary organization shall receive anything of value, other than compensation for services, for any act performed in connection with the establishment of an individual development account or in furtherance of the provisions of this subchapter.

History. Acts 1999, No. 1217, § 5;
2007, No. 252, § 2.

20-86-106. Individual development account.

(a)(1) An individual who is a resident of this state may submit an application to open an individual development account to a fiduciary organization approved by the Department of Workforce Services pursuant to the provisions of § 20-86-105.

(2) The fiduciary organization shall approve the application only if:

(A) The individual has gross household income from all sources for the calendar year preceding the year in which the application is made that does not exceed one hundred eighty-five percent (185%) of the federal poverty level; and

(B) The individual's household net worth at the time the individual development account is opened does not exceed ten thousand dollars (\$10,000) disregarding the primary dwelling and one (1) motor vehicle owned by the household.

(b) An individual opening an individual development account shall be required to enter into an individual development account agreement with the fiduciary organization.

(c) The fiduciary organization shall be responsible for coordinating arrangements between the individual and a financial institution to open the individual's individual development account.

(d)(1)(A) Each fiduciary organization shall provide written notification to each of its eligible individual development account holders of the amount of matching funds provided by the fiduciary to which each such individual development account holder is entitled.

(B) Such notification shall be made at such intervals as the fiduciary organization deems appropriate but shall be required to be made at least one (1) time each calendar year.

(2) The amount of such matching funds for each individual development account holder shall be three dollars (\$3.00) for each one dollar (\$1.00) contributed to the individual development account by the individual development account holder during the preceding calendar year. The amount of such matching funds shall not exceed two thousand dollars (\$2,000) per individual development account holder or four thousand dollars (\$4,000) per household.

(3) If the amount of matching funds available is insufficient to disburse the maximum amounts specified in this subsection, amounts of disbursements shall be reduced proportionately based upon available funds.

(e) If an individual development account holder has gross household income from all sources for a calendar year which exceeds one hundred eighty-five percent (185%) of the federal poverty level, the individual development account holder shall not be eligible to receive funds pursuant to the provisions of subsection (d) of this section in the following year.

(f)(1) In the event of an individual development account holder's death, the individual development account may be transferred to the ownership of a contingent beneficiary or beneficiaries. An individual development account holder shall name a contingent beneficiary or beneficiaries at the time that the individual development account is established and may change the beneficiary or beneficiaries at any time.

(2) If the named beneficiary or beneficiaries are deceased or cannot otherwise accept the transfer, the moneys shall be transferred to the fiduciary organization to redistribute as matching funds.

History. Acts 1999, No. 1217, § 6;
2007, No. 252, § 3.

20-86-107. Individual development account — Purpose.

(a) Individual development accounts may be used for any of the following qualified purposes:

(1) Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time home buyer or the costs of major repairs or improvements to a qualified principal residence, if paid directly to the persons to whom the amounts are due;

(2) Amounts paid directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses consistent with a qualified plan;

(3) Postsecondary educational expenses paid directly to an eligible educational institution;

(4) Amounts paid directly to an individual retirement account or education individual retirement account established pursuant to federal law in the name of the individual development account holder or an immediate family member thereof;

(5) Qualified acquisition costs with respect to the purchase of an automobile or costs of repair of an automobile, if paid directly to a licensed automobile dealer or repair shop. Such a purpose cannot be the sole purpose of the individual development account. Participants must also save for another approved purpose; and

(6) Qualified emergency withdrawals.

(b) However, Temporary Assistance for Needy Families matching funds shall only be used for the purposes set forth in subdivisions (a)(1)-(3) of this section.

History. Acts 1999, No. 1217, § 7.

20-86-108. Penalty.

(a)(1) If the fiduciary organization receives evidence that moneys withdrawn from individual development accounts are withdrawn under false pretenses or are used for purposes other than for the approved purposes indicated at the time of the withdrawal, the fiduciary organization shall make arrangements with the financial institution to impose a penalty of loss of matches and may, at its discretion, close the individual development account.

(2) All penalties collected by fiduciary organizations shall remain with the fiduciary organization to distribute as matching funds to other eligible individuals.

(b) The fiduciary organization shall establish a grievance committee and a procedure to hear, review, and decide in writing any grievance made by an individual development account holder who disputes a decision of the fiduciary organization that a withdrawal is subject to penalty.

(c) Each fiduciary organization shall establish such procedures as are necessary, including prohibiting eligibility for further matching funds, to ensure compliance with this section.

History. Acts 1999, No. 1217, § 8.

20-86-109. Matching funds.

(a)(1) Any individual, business, organization, or other entity may contribute matching funds to a fiduciary organization.

(2) The funds shall be designated to the fiduciary organization to allocate to participants who meet the requirements in § 20-86-106.

(b)(1) A credit shall be allowed against the income tax liability imposed by the Income Tax Act of 1929, § 26-51-101 et seq., for any Arkansas taxpayer who contributes to a fiduciary organization created pursuant to this subchapter in an amount equal to fifty percent (50%) of the amount of matching funds contributed to a fiduciary organization during the calendar year.

(2) The amount of the credit that may be used by a taxpayer for a taxable year shall not exceed the lesser of twenty-five thousand dollars (\$25,000) or the amount of individual or corporate income tax otherwise due.

(c) Any unused credit may be carried over for a maximum of three (3) years up to a total tax credit allowed in the amount of twenty-five thousand dollars (\$25,000).

(d)(1)(A) To claim the benefits of this section, a taxpayer must notify the fiduciary organization that the taxpayer intends to make a contribution and the amount of the contribution.

(B) The fiduciary organization shall then notify the Department of Workforce Services and request a certification from the Department of Workforce Services certifying the amount of the tax credit to which the taxpayer is entitled.

(C) The fiduciary organization shall deliver the certification to the taxpayer upon receipt of the contribution.

(2) A taxpayer must file the certificate with the taxpayer's income tax return for the first year in which the taxpayer claims a tax credit under this subchapter.

(e) The total amount of tax credits certified under this subchapter shall not exceed one hundred thousand dollars (\$100,000) per calendar year.

(f) The Department of Finance and Administration shall promulgate any regulations necessary to carry out the provisions of this section.

(g) The Department of Workforce Services may monitor the use of these funds by fiduciary organizations.

History. Acts 1999, No. 1217, § 9; 2007, No. 252, § 4; 2009, No. 1468, §§ 1, 2.

20-86-110. Effect on other programs.

Funds deposited into an individual development account shall not be counted as income, assets, or resources of the individual in determining financial eligibility for assistance or services pursuant to any federal, federally assisted, state, or municipal program based on need.

History. Acts 1999, No. 1217, § 15.

20-86-111. Reporting requirements.

Each fiduciary organization shall provide quarterly to the Department of Workforce Services the following information:

(1) The number of individuals making deposits into an individual development account;

(2) The amounts deposited into the individual development account;

(3) The amounts not yet allocated to individual development accounts;

(4) The amounts withdrawn from the individual development accounts and the purposes for which the amounts were withdrawn;

(5) The balances remaining in the individual development accounts;

(6) The service configurations such as peer support, structured planning exercises, mentoring, and case management that increased the rate and consistency of participation in the demonstration project and how such configurations varied among different populations or communities; and

(7) The number of grievances filed, the resolution of the grievances, and any penalties imposed.

History. Acts 1999, No. 1217, § 11; 2007, No. 252, § 5.

20-86-112. Implementation.

The Department of Workforce Services shall be responsible for implementation of this subchapter and shall promulgate rules as necessary in accordance with the provisions of this subchapter.

History. Acts 1999, No. 1217, § 13; 2007, No. 252, § 5.

20-86-113. Reports — Recommendations.

(a) The Department of Workforce Services shall prepare a written report annually regarding the implementation of this act and shall make recommendations for improving the program.

(b) The report shall be transmitted to the General Assembly on or before August 1 of each year.

History. Acts 1999, No. 1217, § 12; 2007, No. 252, § 5. 1217, codified as § 19-5-999, § 20-86-101 et seq., and § 26-51-404(b)(22).

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Frozen malted milk.

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Full-time education or training.

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Global payment.

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Grade "A" milk and milk products.

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Milk and dairy products, §20-59-201.

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Milk and dairy products, §20-59-201.

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pasteurized, §20-59-248.****Individual development account.**

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Meat inspection, §20-60-203.

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Labeling.

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Laboratory.

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Laboratory certification program.

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Legal guardian.

Lay caregivers for discharged patients,
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Legend drug.

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Manufacture.

Drug abuse control, §20-64-302.

Manufacturer.

Alcohol and drug abuse, §20-64-503.

Narcotic drug, §20-64-201.

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Medical assistance.

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Medical assistance programs.

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law, §20-77-1303.

Medical transportation.

Assessment fee and program on
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Assessment fee and program on
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Milk sherbet.

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Noneconomic detriment.

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Nonstate government-owned hospital.

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Successful completion.

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Sugar.

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Sweet cream.

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Unbiased review.

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Wholesaler.

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§20-16-1601.

After-care.

Lay caregivers for discharged patients,
§20-77-2602.

Mental health interstate compact,
§20-50-101.

Agency.

Home health care services, §20-10-801.

Agent.

Anatomical gifts, §20-17-1202.

Health care decisions act, §20-6-102.

Long-term care facilities, §20-10-110.

Air ambulance.

Emergency medical services,
§20-13-202.

Air ambulance service.

Assessment fee and program on
medical transport providers,
§20-77-2802.

Emergency medical services,
§20-13-202.

Airborne or blood-borne disease.

Protection of emergency response
workers from life-threatening
disease, §20-13-1501.

Air monitor.

Asbestos removal, §20-27-1003.

Alcohol and drug abuse treatment program.

Licensing of programs, §20-64-902.

Alcohol/drug abuse inpatient treatment center.

Health facilities services, §20-9-201.

Alcoholic.

Alcohol and drug abuse, §20-64-702.

DEFINED TERMS —Cont'd**Alcoholic beverages.**

Alcohol and drug abuse, §20-64-702.

Alcoholism.

Alcohol and drug abuse, §20-64-702.

Allowable expense.

Medical assistance, §20-77-702.

Alteration.

Elevators, dumbwaiters and
escalators, §20-24-101.

Alternative community services waiver.

Medicaid, §20-48-1001.

Ambient temperature.

Eggs, §20-58-202.

Ambulance.

Emergency medical services,
§20-13-202.

Ambulance services.

Assessment fee and program on
medical transport providers,
§20-77-2802.

Emergency medical services,
§20-13-202.

Ambulatory surgery center.

Medicaid reimbursement, §20-77-129.

Ambulatory surgery center Medicaid procedure code.

Medicaid reimbursement, §20-77-129.

Ambulatory surgery center Medicaid reimbursement rate for appropriate procedures,

§20-77-129.

American cheddar cheese.

Milk and dairy products, §20-59-201.

American cheese.

Milk and dairy products, §20-59-201.

Amniotic fluid.

Newborn umbilical cord blood
initiative, §20-8-503.

Anatomical gifts, §20-17-1202.**Animal.**

Pesticides, §20-20-203.

Rabies control, §20-19-302.

Apothecary.

Narcotic drug, §20-64-201.

Appeal.

Medicaid, §20-77-1702.

Applicant.

Emergency medical services personnel
criminal background checks,
§20-13-1101.

Urban homestead act, §20-80-403.

Apprentice.

Fire extinguishers, §20-22-602.

Appropriate federal agency.

Flour and bread enrichment,
§20-57-302.

DEFINED TERMS —Cont'd**Appropriate procedure.**

Ambulatory surgery center Medicaid reimbursement, §20-77-129.

Areas of refuge.

Long-term care facilities and administrators, §20-10-1802.

ArFMNP.

Food, §20-83-103.

Arkansas medicaid prescription drug program.

Prescription drug monitoring program, §20-7-603.

Arkansas medicaid program.

Medicaid fraud, §20-77-901.

Artist.

Body art, §20-27-1501.

Artist in training.

Body art, §20-27-1501.

Artist trainer.

Body art, §20-27-1501.

Asbestos abatement consultant,
§20-27-1003.**Asbestos abatement contractor,**
§20-27-1003.**Asexual reproduction.**

Human cloning, §20-16-1001.

Assembler.

Radiation protection, §20-21-203.

Assessment services.

Public assistance, §20-76-101.

Assessment state.

Medicaid eligibility verification system, §20-77-2102.

Assisted living facility, §20-10-1703.

Long-term care facilities and services, §20-10-101.

Unlicensed long-term care facilities, §20-10-2003.

Assisted living program.

Assisted living facilities, §20-10-1703.

Assisted living services.

Assisted living facilities, §20-10-1703.

Associated participant.

Medicaid provider-led organized care act, §20-77-2703.

Attempt to perform an abortion.

Unborn child pain awareness and prevention act, §20-16-1102.

Attempt to perform or induce an abortion.

Dismemberment abortion, §20-16-1802.

Drug-induced abortions, §20-16-603.

Pain-capable unborn child protection act, §20-16-1402.

DEFINED TERMS —Cont'd**Attending physician.**

Rights of the terminally ill or permanently unconscious, §20-17-201.

Authority.

Public health laboratory, §20-7-403.

Authorized entity.

Insect sting and other allergic reactions emergency treatment, §20-13-403.

Authorized representative.

Elevators, dumbwaiters and escalators, §20-24-101.

Manufactured home standards, §20-25-102.

Authorizing agent.

Missing in America project act, §20-17-1402.

Authorizing resolution.

Public health laboratory, §20-7-403.

Autism spectrum disorder.

Medicaid waiver for autism, §20-77-124.

Auto-injectable epinephrine.

Insect sting and other allergic reactions emergency treatment, §20-13-403.

Automated external defibrillator,
§20-13-1303.**Bar.**

Clean indoor air act, §20-27-1803.

Bedding, §20-27-201.

Unlawful sale of bedding, §20-27-2701.

Bed reservation policy.

Long-term care facilities, protection of residents, §20-10-1202.

Behavioral health impairment.

Behavioral health crisis intervention protocol act, §20-47-803.

Behavior history.

Mental health, §20-47-202.

Beneficial insects.

Pesticides, §20-20-203.

Beneficiary.

Medical assistance, §20-77-702.

Biological agent.

Biological agent registry, §20-36-102.

Bioterrorism.

Vaccination of first responders, §20-13-1201.

Birth admission.

Newborn hearing, screening, tracking and intervention, §20-15-1502.

Birthing facility.

Pulse oximetry screening of newborns for congenital heart defects, §20-9-103.

DEFINED TERMS —Cont'd**Birthing hospital.**

Newborn hearing, screening, tracking and intervention, §20-15-1502.

Blasting, §20-27-1302.**Blasting agent**, §20-27-1302.**Blind person.**

Rehabilitation services, §20-79-203.

Blood.

Alcohol and drug abuse, §20-64-503.

Blood component.

Alcohol and drug abuse, §20-64-503.

Body art, §20-27-1501.**Body piercing.**

Body art, §20-27-1501.

Boiler.

Inspections, §20-23-101.

Branding.

Body art, §20-27-1501.

Bread.

Flour and bread enrichment,
§20-57-302.

Brief hold.

Mental health facilities, §20-46-702.

Buildings.

Public health laboratory, §20-7-403.

Business.

Clean indoor air act, §20-27-1803.

Butter.

Milk and dairy products, §20-59-201.

By-product material.

Radiation protection, §20-21-203.

Calibration sources-consulting services.

Radiation protection, §20-21-203.

Candle.

Eggs, §20-58-202.

Canned food.

Food regulation, §20-57-103.

Capable of use as human food.

Catfish marketing, §20-61-202.

Capacity.

Health care decisions act, §20-6-102.

Capitated.

Medicaid provider-led organized care act, §20-77-2703.

Cardiac arrest.

Automated external defibrillator,
§20-13-1303.

Cardiopulmonary resuscitation.

Automated external defibrillator,
§20-13-1303.

Emergency medical services.

Do not resuscitate orders,
§20-13-901.

Care.

Criminal background checks for emergency medical services personnel, §20-13-1101.

DEFINED TERMS —Cont'd**Care —Cont'd**

Criminal background checks for service providers, §20-38-101.

Care and maintenance.

Cemeteries, §20-17-1002.

Care coordination.

Medicaid provider-led organized care act, §20-77-2703.

Caregiver.

In-home caregiver for Medicaid enrollee, §20-77-128.

Lay caregivers for discharged patients,
§20-77-2602.

Caregiver services.

Home caregiver training, §20-77-2302.

Caretaker relative.

Suspicion-based drug screening and testing of applicants for public assistance, §20-76-702.

Carrier.

Medicaid provider-led organized care act, §20-77-2703.

Case.

Eggs, §20-58-202.

Casein.

Milk and dairy products, §20-59-201.

Case management.

Treatment of mentally ill, §20-47-502.

Case review.

Treatment of mentally ill, §20-47-502.

CASSP.

Treatment of mentally ill, §20-47-502.

Category I response.

Toxicology laboratory services,
§20-13-503.

Category I-A hospital.

Radiation protection, §20-21-203.

Category I nonfriable

asbestos-containing material,
§20-27-1003.

Category I-B hospital.

Radiation protection, §20-21-203.

Category II response.

Toxicology laboratory services,
§20-13-503.

Category II-A hospital.

Radiation protection, §20-21-203.

Category II nonfriable

asbestos-containing material,
§20-27-1003.

Category II-B hospital.

Radiation protection, §20-21-203.

Category III hospital.

Radiation protection, §20-21-203.

Catfish.

Catfish marketing, §20-61-302.
Fish and seafood, §20-61-202.

DEFINED TERMS —Cont'd**Catfish-like.**

Fish and seafood, §20-61-202.

Cats.

Rabies control, §20-19-302.

Cemetery.

Perpetually maintained cemeteries,
§20-17-1002.

Cemetery company.

Perpetually maintained cemeteries,
§20-17-1002.

Certificate.

Asbestos removal, §20-27-1003.

Health facilities and services.

Utilization review, §20-9-902.

Insect sting and other allergic
reactions emergency treatment,
§20-13-403.

Lead-based paint-hazards,
§20-27-2503.

Certificate of birth resulting in stillbirth.

Vital statistics, §20-18-410.

Certified applicator.

Pesticides, §20-20-203.

Certified fire department.

Fire protection services, §20-22-802.

Certified law enforcement

**prescription drug diversion
investigator.**

Prescription drug monitoring program,
§20-7-603.

Chain of custody.

Suspicion-based drug screening and
testing of applicants for public
assistance, §20-76-702.

Cheddar cheese.

Milk and dairy products, §20-59-201.

Cheese.

Milk and dairy products, §20-59-201.

Chief executive officer.

Nuclear planning and response grants,
§20-21-501.

Child.

Child death review panel, §20-27-1702.

Putative father registry, §20-18-701.

Child care appeal review panel,
§20-78-202.**Child care facility.**

Public health and welfare, §20-78-202.
Shaken baby syndrome education
program, §20-9-1401.

Child health management services,
§20-48-1102.**Child health management services
operated by academic medical
center,** §20-48-1102.**DEFINED TERMS —Cont'd****Child-occupied facility.**

Lead-based paint-hazards,
§20-27-2503.

Child-proof packaging.

Medical marijuana, §20-56-304.

Children's product.

Children's product safety, §20-27-1602.

Child with emotional disturbance.

Treatment of mentally ill, §20-47-502.

Chiropractor.

Radiation protection, §20-21-203.

Chronic nonmalignant pain.

Combating prescription drug abuse,
§20-7-702.

Cigarette.

Cigarette fire safety standard act,
§20-27-2103.

Civil penalty.

Radiation protection, §20-21-203.

Claim.

Medicaid, §20-77-1702.

Medicaid fraud, §20-77-901.

Medical assistance programs integrity
law, §20-77-1303.

Claimant.

Medical assistance, §20-77-702.

Class A license.

Home health care services, §20-10-801.

Class B license.

Home health care services, §20-10-801.

Client.

Mental illness and substance abuse,
§20-46-601.

Clock hour.

Long-term care facilities and services,
§20-10-101.

Code.

Manufactured home standards,
§20-25-102.

Coercion.

Abortion, parental involvement
enhancement act, §20-16-803.

Collateral source.

Medical assistance, §20-77-702.

Columbarium.

Cemeteries, §20-17-1002.

Commence construction.

Health services agency, §20-8-109.

Commercial applicator.

Pesticides, §20-20-203.

Commercial medical waste.

Disposal, §20-32-101.

Commercial user.

Children's product safety, §20-27-1602.

Common control.

Alcohol and drug abuse, §20-64-503.

DEFINED TERMS —Cont'd**Community-based.**

Community-based health care access programs, §20-77-1502.

Community-based agency.

Older worker employment, §20-80-203.

Community-based health care access program, §20-77-1502.**Community-based health cooperative.**

Community-based health care access programs, §20-77-1502.

Community-based health network.

Community-based health care access programs, §20-77-1502.

Community mental health center.

Behavioral health crisis intervention protocol act, §20-47-803.

Protocol and accountability for

facilities holding arrested person with mental illness, §20-47-601.

Treatment of mentally ill, §20-47-202.

Community organization.

Urban homestead act, §20-80-403.

Community public water system, §20-28-102.**Community service.**

Older worker employment, §20-80-203.

Public assistance, §20-76-402.

Compensation.

Home caregiver training, §20-77-2302.

Lay caregivers for discharged patients, §20-77-2602.

Complication.

Abortion, women's right to know act, §20-16-1702.

Compound.

Drug abuse control, §20-64-302.

Comprehensive children's behavioral health system of care plan.

Treatment of mentally ill, §20-47-502.

Comprehensive psychiatric emergency service.

Behavioral health crisis intervention protocol act, §20-47-803.

Concentrated milk.

Milk and dairy products, §20-59-201.

Concentrated skimmed milk.

Milk and dairy products, §20-59-201.

Conception.

Abortion, women's right to know act, §20-16-1702.

Concurrent authorization.

Medicaid, §20-77-1702.

Concurrent review.

Medicaid, §20-77-1702.

DEFINED TERMS —Cont'd**Condensed milk.**

Milk and dairy products, §20-59-201.

Condensed skim milk.

Milk and dairy products, §20-59-201.

Confirmation test.

Suspicion-based drug screening and testing of applicants for public assistance, §20-76-702.

Conflict of interest.

Peer review fairness act, §20-9-1303.

Congregate services.

Unlicensed long-term care facilities, §20-10-2003.

Congregate setting.

Residential care facilities, §20-47-303.

Consent.

Abortion, parental involvement enhancement act, §20-16-803.

Construct.

Building and local grants, §20-7-202.

Public health laboratory, §20-7-403.

Construction fund.

Public health laboratory, §20-7-403.

Consultant.

Lead-based paint-hazards, §20-27-2503.

Consumer.

Eggs, §20-58-202.

Tanning salons, consent required, §20-27-2201.

Consumer testing.

Cigarette fire safety standard act, §20-27-2104.

Container.

Eggs, §20-58-202.

Meat inspection, §20-60-203.

Contaminated with filth.

Food, drug and cosmetic act, §20-56-202.

Contraceptive.

Human heartbeat protection act, §20-16-1302.

Contraceptives procedures.

Family planning, §20-16-303.

Contraceptives supplies.

Family planning, §20-16-303.

Contract.

Volunteer health care act, §20-8-803.

Contracting state.

Achieving a better life experience program act, §20-3-103.

Contractor.

Asbestos removal, §20-27-1003.

Blasting, §20-27-1302.

Lead-based paint-hazards, §20-27-2503.

DEFINED TERMS —Cont'd**Contributing beneficiary.**

Medical assistance, §20-77-702.

Controlled substance.

Alcohol and drug abuse, §20-64-503.

Prescription drug monitoring program,
§20-7-603.

Controlling interest.

Perpetually maintained cemeteries,
§20-17-1012.

Conversion of services.

Health services agency, §20-8-101.

Conveyance.

Elevators, dumbwaiters and
escalators, §20-24-101.

Cooperative agreement.

Nuclear planning and response grants,
§20-21-501.

Cooperative association.

Milk processors, §20-59-601.

Coordinate.

Treatment of individuals with
developmental disabilities,
§20-48-202.

Cosmetic.

Food, drug and cosmetic act,
§20-56-202.

Cost sharing.

Medicaid, §20-77-1203.

Cotrustees of the special needs trust revolving fund.

Medical assistance, §20-77-702.

Cottage food production operation.

Regulation of food, §20-57-201.

Counterfeit drug.

Drug abuse control, §20-64-302.

Counterfeit substance.

Food, drug and cosmetic act,
§20-56-202.

Coupon.

Food, §20-83-103.

Court.

Putative father registry, §20-18-701.

Covered Medicaid beneficiary population.

Medicaid provider-led organized care
act, §20-77-2703.

CPR.

Emergency medical services.
Do not resuscitate orders,
§20-13-901.

Cream.

Milk and dairy products, §20-59-201.

Cream or milk grader.

Milk and dairy products, §20-59-201.

Crib.

Children's product safety, §20-27-1602.

DEFINED TERMS —Cont'd**Crisis intervention protocol.**

Behavioral health crisis intervention
protocol act, §20-47-803.

Crisis intervention team.

Behavioral health crisis intervention
protocol act, §20-47-803.

Crisis intervention team officer.

Behavioral health crisis intervention
protocol act, §20-47-803.

Crisis response services.

Treatment of mentally ill, §20-47-202.

Crisis stabilization unit.

Behavioral health crisis intervention
protocol act, §20-47-803.

Crisis stabilization unit catchment area.

Behavioral health crisis intervention
protocol act, §20-47-803.

Critical item.

Body art, §20-27-1501.
Swimming pools, §20-30-101.

Critical systems.

Long-term care facilities and
administrators, §20-10-1802.

Crypt.

Cemeteries, §20-17-1002.

Cued speech.

Interpreters for deaf, deafblind or hard
of hearing persons, §20-14-802.

Current procedural terminology code.

Ambulatory surgery center Medicaid
reimbursement, §20-77-129.

Custodial service.

Long-term care facilities, protection of
residents, §20-10-1202.

Dairy cooperative.

Milk laboratory antibiotics,
§20-59-701.

Dairy farmer.

Milk processor, §20-59-601.

Dairy plant.

Milk laboratory antibiotics,
§20-59-701.

Dairy processor.

Milk laboratory antibiotics,
§20-59-701.

Dairy producer.

Milk laboratory antibiotics,
§20-59-701.

Dairy products.

Milk and dairy products, §20-59-201.

Dairy products plants.

Milk and dairy products, §20-59-201.

Damages.

Medicaid fraud, §20-77-901.

DEFINED TERMS —Cont'd**Data, records, reports and documents.**

Health care quality and payment
policy advisory committee,
§20-77-2202.

Date of enrollment.

Public assistance, §20-76-101.

Date of filing.

Vital statistics, §20-18-102.

Day shift.

Long-term care facilities and
administrators, §20-10-1401.

DD form 93.

Final disposition rights act,
§20-17-102.

Missing in America project act,
§20-17-1402.

Dead body.

Vital statistics, §20-18-102.

Dead fetus.

Disposition of human tissue,
§20-17-801.

Deafblind individual.

Interpreters for deaf, deafblind or hard
of hearing persons, §20-14-802.

Deaf individual.

Interpreters for deaf, deafblind or hard
of hearing persons, §20-14-802.

Deaf interpreter.

Interpreters for deaf, deafblind or hard
of hearing persons, §20-14-802.

Dealer.

Manufactured home standards,
§20-25-102.

Dealer-wholesaler.

Eggs, §20-58-202.

Decedent.

Anatomical gifts, §20-17-1202.

Declaration.

Rights of the terminally ill or
permanently unconscious,
§20-17-201.

Decommissioning.

Radiation protection, §20-21-203.

Defects.

Manufactured homes, §20-25-102.

Defibrillation.

Automated external defibrillator,
§20-13-1303.

Deficiency.

Long-term care facilities and
administrators, §20-10-1902.

Deficiency tag number.

Long-term care facilities and
administrators, §20-10-1902.

Defoliant.

Pesticides, §20-20-203.

DEFINED TERMS —Cont'd**Demolition.**

Asbestos removal, §20-27-1003.

Denatured.

Eggs, §20-58-202.

Denial.

Medicaid, §20-77-1702.

Dental radiographic unit.

Radiation protection, §20-21-203.

Dentist.

Narcotic drug, §20-64-201.

Dependent lividity.

Withholding CPR in nursing facilities
for unwitnessed deaths,
§20-17-104.

Depressant or stimulant drug.

Drug abuse control, §20-64-302.

Desiccant pesticides, §20-20-203.**Designated beneficiary.**

Achieving a better life experience
program act, §20-3-103.

Designated residential setting.

Residential care facilities, §20-47-303.

Detention.

Alcohol and drug abuse, §20-64-801.
Treatment of mentally ill, §20-47-202.

Determination.

Criminal background checks for
service providers, §20-38-101.

Determination state.

Medicaid eligibility verification
system, §20-77-2102.

Developmental day treatment clinic services for children.

Child health management services,
§20-48-1102.

Developmental delay.

Early intervention program for infants
and toddlers, §20-14-502.

Developmental disability.

Community homes, §20-48-603.
Treatment of individuals with
developmental disabilities,
§20-48-101.

Developmentally disabled person.

Community homes, §20-48-603.

Diagnosis-related group methodology.

Medicaid, §20-77-132.

Diagnostic mammography, §20-15-1002.**Died while serving.**

Final disposition rights act,
§20-17-102.

Direct-care staff.

Long-term care facilities and
administrators, §20-10-1401.

DEFINED TERMS —Cont'd**Direct retail sale.**

Catfish marketing, §20-61-202.

Direct service provider.

Medicaid provider-led organized care act, §20-77-2703.

Disability certification.

Achieving a better life experience program act, §20-3-103.

Disabled individuals.

Rehabilitation services, §20-79-203.

Disaster locations.

Vaccination of first responders, §20-13-1201.

Discharge.

Lay caregivers for discharged patients, §20-77-2602.

Disinterested witnesses.

Anatomical gifts, §20-17-1202.

Dismemberment abortion,

§20-16-1802.

Dispense.

Narcotic drug, §20-64-201.

Prescription drug monitoring program, §20-7-603.

Dispenser.

Prescription drug monitoring program, §20-7-603.

Distribute.

Pesticides, §20-20-203.

Distributor.

Catfish marketing, §20-61-202.

Fireworks, §20-22-701.

Distributors of grade "A" milk and milk products processed by plants outside of Arkansas.

Grade "A" milk program, §20-59-402.

Diversion from assistance.

Public assistance, §20-76-101.

Division of EMS and trauma systems.

Criminal background checks for emergency medical services personnel, §20-13-1101.

Document of gift.

Anatomical gifts, §20-17-1202.

Dogs.

Rabies control, §20-19-302.

Donor.

Anatomical gifts, §20-17-1202.

Donor registry.

Anatomical gifts, §20-17-1202.

Do not resuscitate identification.

Emergency medical services, §20-13-901.

Dormant elevator, dumbwaiter or escalator, §20-24-101.**DEFINED TERMS —Cont'd****Driver's license.**

Anatomical gifts, §20-17-1202.

Drug.

Drug abuse control, §20-64-302.

Food, drug and cosmetic act, §20-56-202.

Suspicion-based drug screening and testing of applicants for public assistance, §20-76-702.

Drug overdose.

Immunity for seeking medical assistance for drug overdose, §20-13-1703.

Drug review committee.

Medicaid, §20-77-123.

Drug sample.

Alcohol and drug abuse, §20-64-503.

Drug test.

Suspicion-based drug screening and testing of applicants for public assistance, §20-76-702.

Drug testing agency.

Suspicion-based drug screening and testing of applicants for public assistance, §20-76-702.

Drug treatment program.

Suspicion-based drug screening and testing of applicants for public assistance, §20-76-702.

Dumbwaiter, §20-24-101.**Durable power of attorney for health care.**

Health care decisions act, §20-6-102.

Dwelling.

Lead poisoning prevention, §20-27-602.

Dwelling unit.

Lead poisoning prevention, §20-27-602.

Early intervention services.

Infants and toddlers with disabilities, §20-14-502.

Economic loss.

Medical assistance, §20-77-702.

Education or training.

Public assistance, §§20-76-101, 20-76-402.

Eggs.

Food regulation, §20-58-202.

Electrical facilities.

Electrical code, §20-31-102.

Electrical work.

Electrical code, §20-31-102.

Electrician.

Electrical code, §20-31-102.

Electronic products.

Radiation protection, §20-21-303.

Elevator, §20-24-101.

DEFINED TERMS —Cont'd**Eligible educational institution.**

Family savings initiative, §20-86-104.

Eligible individual.

Achieving a better life experience program act, §20-3-103.

Medicaid, §20-77-1203.

Older worker employment, §20-80-203.

Eligible organization.

Insolvent cemetery grant program, §20-17-1305.

Eligible participant.

Older worker employment, §20-80-203.

Eligible patient.

Right to try act, §20-15-2103.

Eligible person.

Urban homestead act, §20-80-403.

Eligible structure.

Asbestos removal, §20-27-1003.

Emancipated minor.

Abortion, parental involvement enhancement act, §20-16-803.

Abortion, women's right to know act, §20-16-1702.

Health care decisions act, §20-6-102.

Embryo.

Human cloning, §20-16-1001.

Emergency.

Hospitals, implied consent in emergency, §20-9-603.

Long-term care facilities and services, §20-10-903.

Emergency contraception.

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Do not resuscitate orders, §20-13-901.

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Emergency responder.

Health care decisions act, §20-6-102.

Emergency response worker.

Protection from life-threatening disease, §20-13-1501.

Emergency sample.

Toxicology laboratory services, §20-13-503.

Emergency situations.

Consent to medical or surgical treatment, §20-9-602.

Emergent care clinic.

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Employee.

Clean indoor air act, §20-27-1803.

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Employer.

Clean indoor air act, §20-27-1803.

Employment assistance.

Public assistance, §20-76-101.

Employment handicap.

Rehabilitation services, §20-79-203.

EMS division.

Trauma care system, §20-13-803.

Enclosed area.

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Enrichment.

Flour and bread, §20-57-302.

Enrollable Medicaid beneficiary population.

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Pesticides, §20-20-203.

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Milk processor, §20-59-601.

Establishment.

Body art, §20-27-1501.

Establishment of a workshop or rehabilitation facility.

Rehabilitation services, §20-79-203.

Estate.

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Evaluation.

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Evaluation officer.

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Evaporated milk.

Milk and dairy products, §20-59-201.

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Milk and dairy products, §20-59-201.

Evening shift.

Long-term care facilities and administrators, §20-10-1401.

Evidence-based strategies.

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Expected user.

Insect sting and other allergic reactions emergency treatment, §20-13-403.

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Exposed surface.

Lead poisoning prevention, §20-27-602.

Extended observation bed.

Behavioral health crisis intervention protocol act, §20-47-803.

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Public assistance, §20-76-101.

External inspection.

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Fabricator.

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Facilities.

Abortion, women's right to know act, §20-16-1702.

Asbestos removal, §20-27-1003.

Long-term care facilities and administrators, §20-10-1802.

Long-term care facilities and services, §20-10-903.

Medical waste disposal, §20-32-101.

Fail-first.

Medicaid, §20-77-123.

Failure to perform.

Nuclear planning and response grants, §20-21-501.

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Community homes for individuals with developmental disabilities, §20-48-603.

Family home II.

Community homes for individuals with developmental disabilities, §20-48-603.

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Catfish marketing, §20-61-206.

Father.

Putative father registry, §20-18-701.

Federal act.

Drug abuse control, §20-64-302.

Food, drug and cosmetic act, §20-56-202.

Long-term care facilities and services, §20-10-213.

Federal meat inspection act.

Meat inspection, §20-60-203.

Federal narcotic laws.

Alcohol and drug abuse, §20-64-201.

Federal poverty level.

Family savings initiative, §20-86-104.

Federal standards.

Manufactured homes, §20-25-102.

Fee revenues.

Public health laboratory, §20-7-403.

Fees.

Health department building and local grants, §20-7-202.

Public health laboratory, §20-7-403.

DEFINED TERMS —Cont'd**Felt.**

Bedding, §20-27-201.

Fertilization.

Pain-capable unborn child protection act, §20-16-1402.

Fetal death.

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Fetus.

Human cloning, §20-16-1001.

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Fiduciary organization.

Family savings initiative, §20-86-104.

Field superintendent.

Milk and dairy products, §20-59-201.

File.

Vital statistics, §20-18-102.

Final determination.

Medicaid, §20-77-1702.

Final disposition.

Burials, §20-17-102.

Vital statistics, §20-18-102.

Final printed labeling.

Abortion-inducing drugs safety act, §20-16-1503.

Financial institution.

Family savings initiative, §20-86-104.

Fire department.

Fire protection services, §20-22-802.

Firefighter.

Fire protection services, §20-22-802.

Fire mitigation.

Comprehensive fire protection, §20-22-1003.

Fire prevention.

Comprehensive fire protection, §20-22-1003.

Fire protection sprinkler system.

Fire extinguishers, §20-22-602.

Fire protection sprinkler system business.

Fire extinguishers, §20-22-602.

Fire services.

Comprehensive fire protection, §20-22-1003.

Fire sprinkler systems inspectors.

Fire extinguishers, §20-22-602.

Fire training.

Comprehensive fire protection, §20-22-1003.

Firm.

Fire extinguishers, §20-22-602.

First grade cream.

Milk and dairy products, §20-59-201.

First responders.

Naxalone access act, §20-13-1803.

DEFINED TERMS —Cont'd**First responders —Cont'd**

Tourniquet use, training and immunity, §20-13-106.

Vaccination of first responders, §20-13-1201.

First trimester.

Abortion, women's right to know act, §20-16-1702.

Fiscal agents.

Medicaid fraud, §20-77-901.

Five-panel drug test.

Suspicion-based drug screening and testing of applicants for public assistance, §20-76-702.

Fixed fire extinguisher systems,
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Flexible services.

Medicaid provider-led organized care act, §20-77-2703.

Floor plan.

Child care facilities, §20-78-228.

Flour.

Flour and bread enrichment, §20-57-302.

Follow-up care.

Newborn hearing, screening, tracking and intervention, §20-15-1502.

Follow-up screening.

Newborn hearing, screening, tracking and intervention, §20-15-1502.

Food.

Food, drug and cosmetic act, §20-56-202.

Food salvage distributor.

Food regulation, §20-57-102.

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Food regulation, §20-57-102.

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Regulation of food, §20-57-201.

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Milk and dairy products, §20-59-201.

Fowler's position.

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Fraud.

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Medicaid inspector general, §20-77-2502.

Free-standing birthing center,
§20-9-401.

Shaken baby syndrome education program, §20-9-1401.

Freight elevator, §20-24-101.

DEFINED TERMS —Cont'd**Friable asbestos material.**

Asbestos removal, §20-27-1003.

Frozen custard.

Milk and dairy products, §20-59-201.

Frozen malted milk.

Milk and dairy products, §20-59-201.

Full-size crib.

Children's product safety, §20-27-1602.

Full-time education or training.

Public assistance, §20-76-101.

Funeral establishment.

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§20-17-1402.

Fungus.

Pesticides, §20-20-203.

Gambling activity.

Information to be included in
gambling advertisements,
§20-27-2601.

Gambling operator.

Information to be included in
gambling advertisements,
§20-27-2601.

**Gas chromatograph and x-ray
fluorescence devices.**

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General license.

Radiation protection, §20-21-203.

Generator.

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Abortion-inducing drugs safety act,
§20-16-1503.

Unborn child pain awareness and
prevention act, §20-16-1102.

Global payment.

Medicaid provider-led organized care
act, §20-77-2703.

Governmental contractor.

Volunteer health care act, §20-8-803.

Grade "A" milk and milk products.

Grade "A" milk program, §20-59-502.

Milk and dairy products, §20-59-402.

**Grade "A" milk industry of the state
of Arkansas.**

Grade "A" milk program, §20-59-502.

Grade "A" milk plant.

Grade "A" milk program, §20-59-502.

Grade "A" milk producer.

Milk and dairy products, §20-59-502.

Grantor.

Medical assistance, §20-77-702.

Gravely disabled.

Alcohol and drug abuse, §20-64-801.

DEFINED TERMS —Cont'd**Gross receipts.**

Alternative community services waiver
provider fee, §20-48-1002.

Intermediate care facilities,
§20-48-901.

Long-term care facilities and
administrators, §20-10-1601.

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§20-27-705.

Guardian.

Anatomical gifts, §20-17-1202.

Health care decisions act, §20-6-102.

Mental incompetent sterilization,
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Guest artists.

Body art, §20-27-1501.

Habitual violation.

Long-term care facilities and services.
Receivership, §20-10-903.

Hand elevators, §20-24-101.**Hard of hearing individual.**

Interpreters for deaf, deafblind or hard
of hearing persons, §20-14-802.

Harm reduction organization.

Naxalone access act, §20-13-1803.

Has been bitten.

Rabies control, §20-19-302.

Hazardous locations.

Safety glazing materials, §20-27-901.

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Long-term care facilities and services,
§20-10-101.

**Head injury retraining and
rehabilitation.**

Long-term care facilities and services,
§20-10-101.

Health care.

Health care decisions act, §20-6-102.

Health care-associated infections.

Health facility infection disclosures,
§20-9-1202.

Health care coverage.

ARKids first program, §§20-77-1103,
20-77-1104.

Health care decision.

Health care decisions act, §20-6-102.

Health care facilities.

Clean indoor air act, §20-27-1803.

Emergency medical services.

Do not resuscitate orders,
§20-13-901.

Health services agency, §20-8-101.

Physician order for life-sustaining
treatment (POLST), §20-6-303.

Protection of emergency response
workers from life-threatening
disease, §20-13-1501.

DEFINED TERMS —Cont'd**Health care institution.**

Health care decisions act, §20-6-102.

Health care plan.

Medicaid inspector general,
§20-77-2502.

Health care professional.

Insect sting and other allergic
reactions emergency treatment,
§20-13-403.

Naxalone access act, §20-13-1803.

Health care provider.

Health care decisions act, §20-6-102.

Health care quality and payment
policy advisory committee,
§20-77-2202.

HIV shield law, §20-15-905.

Medicaid integrity audit contracts.

Contingency fee prohibited,
§20-77-125.

Medical assistance programs integrity
law, §20-77-1303.

Patient right-to-know act, §20-6-203.

Physician order for life-sustaining
treatment (POLST), §20-6-303.

Protection of emergency response
workers from life-threatening
disease, §20-13-1501.

Rights of the terminally ill or
permanently unconscious,
§20-17-201.

Volunteer health care act, §20-8-803.

Health care proxy.

Rights of the terminally ill or
permanently unconscious,
§20-17-201.

Health facility.

Health facility infection disclosures,
§20-9-1202.

Health services agency, §20-8-101.

HIV shield law, §20-15-905.

Health insurer.

Medicaid, third party liability,
§20-77-306.

Health spa.

Automated external defibrillators,
§20-13-1306.

Hearing loss.

Newborn hearing, screening, tracking
and intervention, §20-15-1502.

Hearing screening.

Newborn hearing, screening, tracking
and intervention, §20-15-1502.

Heartbeat.

Human heartbeat protection act,
§20-16-1302.

Herbal chewing snuff.

Sale of herbal snuff to minors,
§20-27-2402.

DEFINED TERMS —Cont'd**Herbal dipping snuff.**

Sale of herbal snuff to minors,
§20-27-2402.

Herbal snuff.

Sale of herbal snuff to minors,
§20-27-2402.

Herbal snus.

Sale of herbal snuff to minors,
§20-27-2402.

High-level radioactive waste.

Radiation protection, §20-21-203.

High risk.

Colorectal cancer prevention, early
detection and treatment act,
§20-15-1903.

High-risk area.

Needlestick safety and prevention,
§20-9-311.

HIV.

Shield law, §20-15-905.

HIV test.

Shield law, §20-15-905.

Home health care services,

§20-10-801.

Home health care services agency,

§20-10-801.

**Home intravenous drug therapy
services.**

Medical assistance, §20-77-801.

Homestead.

Urban homestead act, §20-80-403.

Homicidal.

Alcohol and drug abuse, §20-64-801.

Horse power.

Boiler inspections, §20-23-101.

Hospice.

Health department, §20-7-117.

Hospital.

Abortion, women's right to know act,
§20-16-1702.

Anatomical gifts, §20-17-1202.

Assessment fee on hospitals to
improve health care access,
§20-77-1901.

Combating prescription drug abuse,
§20-7-702.

Health facilities inspections,
§20-9-219.

Health facilities services, §20-9-201.

Health services agency, §20-8-101.

Lay caregivers for discharged patients,
§20-77-2602.

Narcotic drug, §20-64-201.

Peer review fairness act, §20-9-1303.

Shaken baby syndrome education
program, §20-9-1401.

Treatment of mentally ill, §20-47-202.

DEFINED TERMS —Cont'd**Hospital inpatient-only list.**

Ambulatory surgery center Medicaid reimbursement, §20-77-129.

Hospital outpatient procedure department.

Ambulatory surgery center Medicaid reimbursement, §20-77-129.

Human cloning, §20-16-1001.**Human development center.**

Treatment of individuals with developmental disabilities, §20-48-101.

Human growth hormone.

Food, drug and cosmetic act, §20-56-202.

Human individual.

Human heartbeat protection act, §20-16-1302.

Human tissue.

Disposition of human tissue, §20-17-801.

Hydrostatic testing.

Fire extinguishers, §20-22-602.

ICC Class C common fireworks, §20-22-701.**Ice cream.**

Milk and dairy products, §20-59-201.

Ice cream mix.

Milk and dairy products, §20-59-201.

Ice milk.

Milk and dairy products, §20-59-201.

Ice or ice sherbet.

Milk and dairy products, §20-59-201.

Identification card.

Anatomical gifts, §20-17-1202.

Imitation firearm, §20-27-2301.**Imitation ice cream.**

Milk and dairy products, §20-59-201.

Immediate container.

Eggs, §20-58-202.

Food, drug and cosmetic act, §20-56-202.

Meat inspection, §20-60-203.

Imminent health hazard.

Swimming pools, §20-30-101.

Impartial decision maker.

Long-term care facilities and administrators, §20-10-1902.

Imported catfish.

Catfish marketing, §20-61-206.

Imported raw milk.

Grade "A" milk program, §20-59-402.

Importer.

Fireworks, §20-22-701.

Incidental sales of goat milk and whole milk that has not been pasteurized, §20-59-248.**DEFINED TERMS —Cont'd****Incompetent.**

Abortion, parental involvement enhancement act, §20-16-803.

Sex discrimination by abortion prohibition act, §20-16-1903.

Sterilization of mental incompetents, §20-49-101.

Index.

Criminal background checks for emergency medical services personnel, §20-13-1101.

Individual.

Treatment of individuals with developmental disabilities, §20-48-202.

Individual development account.

Family savings initiative, §20-86-104.

Individual instruction.

Health care decisions act, §20-6-102.

Induced termination of pregnancy.

Vital statistics, §20-18-102.

Industrial units.

Radiation protection, §20-21-203.

Inedible and unfit for human food.

Eggs, §20-58-202.

Infant.

Born-alive infant protection, §20-16-604.

Children's product safety, §20-27-1602.

Newborn hearing, screening, tracking and intervention, §20-15-1502.

Infant interment garden.

Perpetually maintained cemeteries, §20-17-1002.

Infants and toddlers with handicaps.

Early intervention programs, §20-14-502.

Infant who is born alive.

Born-alive infant protection, §20-16-604.

Infiltrate.

Clean indoor air act, §20-27-1803.

Informal dispute resolution.

Long-term care facilities and administrators, §20-10-1902.

Information retrieval.

Poison control, drug information and toxicological laboratory services, §20-13-503.

Initial screening.

Treatment of mentally ill, §20-47-202.

Inmate with mental illness.

Protocol and accountability for facilities holding arrested person with mental illness, §20-47-601.

DEFINED TERMS —Cont'd**Insect.**

Pesticides, §20-20-203.

Inspection.

Health facilities inspections,
§20-9-219.

Inspection service.

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Inspector.

Asbestos removal, §20-27-1003.

Lead-based paint-hazards,
§20-27-2503.

Meat inspection, §20-60-203.

Installation.

Manufactured homes, §20-25-102.

Installer.

Manufactured home standards,
§20-25-102.

Safety glazing materials, §20-27-901.

Institution.

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Long-term care facilities and services.

Office of long-term care, §20-10-213.

Mental health interstate compact,
§20-50-101.

Vital statistics, §20-18-102.

Instrument.

Body art, §20-27-1501.

Intensive early intervention treatment.

Medicaid waiver for autism,
§20-77-124.

Intensive residential treatment program.

Mental health, §20-46-502.

Interested persons.

Nonhuman primates, §20-19-601.

Intermediate care facility for individuals with developmental disabilities.

Residential care facilities, §20-47-303.

Interment.

Cemeteries, §20-17-1002.

Missing in America project act,
§20-17-1402.

Internal inspection.

Boiler inspections, §20-23-101.

Interpret.

Interpreters for deaf, deafblind or hard
of hearing persons, §20-14-802.

Interpreting agency.

Interpreters for deaf, deafblind or hard
of hearing persons, §20-14-802.

Intervention.

Newborn hearing, screening, tracking
and intervention, §20-15-1502.

Intrastate commerce.

Meat inspection, §20-60-203.

DEFINED TERMS —Cont'd**Investigation.**

Health facilities inspections,
§20-9-219.

Medicaid inspector general,
§20-77-2502.

Peer review fairness act, §20-9-1303.

Prescription drug monitoring program,
§20-7-603.

Investigational drug, biologic product, or device.

Right to try act, §20-15-2103.

In vitro laboratory testing.

Radiation protection, §20-21-203.

Involuntary admission.

Treatment of mentally ill, §20-47-202.

Ionizing radiation.

Radiation protection, §20-21-203.

Irradiator.

Radiation protection, §20-21-203.

Is being operated in accordance with this act.

Child care, §20-78-209.

Jail inmate.

Protocol and accountability for
facilities holding arrested person
with mental illness, §20-47-601.

Jobber.

Fireworks, §20-22-701.

Job search assistance.

Public assistance, §20-76-402.

Know.

Anatomical gifts, §20-17-1202.

Knowingly.

Medicaid fraud, §20-77-901.

Label.

Catfish marketing, §20-61-202.

Food, drug and cosmetic act,
§20-56-202.

Manufactured home standards,
§20-25-102.

Meat inspection, §20-60-203.

Labeling.

Catfish marketing, §20-61-202.

Pesticides, §20-20-203.

Laboratory.

Milk antibiotic drugs, §20-59-701.

Narcotic drug, §20-64-201.

Public health laboratory, §20-7-403.

Laboratory certification program.

Milk laboratory antibiotics,
§20-59-701.

Land.

Pesticides, §20-20-203.

Large carnivore.

§20-19-501.

Law enforcement officer.

Nonhuman primates, §20-19-601.

DEFINED TERMS —Cont'd**Lawn crypt.**

Cemeteries, §20-17-1002.

Lead-based paint, §20-27-2503.**Lead-based paint activities,**
§20-27-2503.**Lead-based paint hazard,**
§20-27-2503.**Lead-bearing substance.**

Lead poisoning prevention, §20-27-602.

Least restrictive appropriate setting.

Treatment of mentally ill, §20-47-202.

Legal guardian.Lay caregivers for discharged patients,
§20-77-2602.**Legal representative.**

Physician order for life-sustaining treatment (POLST), §20-6-303.

Legend drug.

Alcohol and drug abuse, §20-64-503.

Level of care.

Medicaid, §20-77-1702.

License.

Asbestos removal, §20-27-1003.

Fireworks, §20-22-701.

Lead-based paint hazards,
§20-27-2503.

Pesticides, §20-20-203.

Licensed certified social worker.

Mental health services provider duty to warn, §20-45-201.

Licensed marriage and family therapist.

Mental health services provider duty to warn, §20-45-201.

Licensed professional counselor.

Mental health services provider duty to warn, §20-45-201.

Licensed provisional interpreter.

Interpreters for deaf, deafblind or hard of hearing persons, §20-14-802.

Licensed qualified interpreter.

Interpreters for deaf, deafblind or hard of hearing persons, §20-14-802.

Licensee.

Long-term care facilities and services.

Receivership, §20-10-903.

Licensing agency.

Criminal background checks for emergency medical services personnel, §20-13-1101.

Licensing or certifying agency.

Criminal background checks for service providers, §20-38-101.

Licensure.

Criminal background checks for emergency medical services personnel, §20-13-1101.

DEFINED TERMS —Cont'd**Licensure —Cont'd**Emergency medical services,
§20-13-202.**Life-sustaining procedure.**

Do not resuscitate orders, §20-13-901.

Life-sustaining treatment.Rights of the terminally ill or permanently unconscious,
§20-17-201.**Limited nursing services.**

Assisted living facilities, §20-10-1703.

Live birth.

Vital statistics, §20-18-102.

Livestock.

Meat inspection, §20-60-203.

Living will.

Health care decisions act, §20-6-102.

Loan.

Public health laboratory, §20-7-403.

Local governing authority.

Clean indoor air act, §20-27-1803.

Local government.

Fire protection, §20-22-1003.

Nuclear planning and response grants,
§20-21-501.**Locality.**Treatment of individuals with developmental disabilities,
§20-48-202.**Locally produced whole milk products.**

Incidental sales of goat milk and whole milk that has not been pasteurized, §20-59-248.

Long-term care and related community-based services.

Long-term care network, §20-10-501.

Long-term care facility, §20-10-101.

Aide training, §20-10-702.

Clean indoor air act, §20-27-1803.

Long-term care, options counseling,
§20-10-2101.Long-term care partnership program,
§20-77-1802.

Office of long-term care, §20-10-213.

Protection of residents, §20-10-1202.

Personal funds of residents,
§20-10-110.**Long-term care facility****administrator, §20-10-101.****Long-term care insurance.**Long-term care partnership program,
§20-77-1802.**Long-term care services.**Long-term care partnership program,
§20-77-1802.

DEFINED TERMS —Cont'd

Lot or grave space cemeteries,
§20-17-1002.

Low income patient.

Volunteer health care act, §20-8-803.

Low-level radioactive waste.

Radiation protection, §20-21-203.

Low-risk pregnancy.

Free-standing birthing centers,
§20-9-401.

Maintenance.

Rehabilitation services, §20-79-203.

Major bodily function.

Human heartbeat protection act,
§20-16-1302.

Mammography, §20-15-1002.**Managed care organization.**

Medicaid fraud, §20-77-901.

Management planner.

Asbestos removal, §20-27-1003.

Manufacture.

Drug abuse control, §20-64-302.
Unlawful sale of bedding, §20-27-2701.

Manufactured home.

Standards, §20-25-102.

Manufacturer.

Alcohol and drug abuse, §20-64-503.
Cigarette fire safety standard act,
§20-27-2103.
Fireworks, §20-22-701.
Manufactured home standards,
§20-25-102.
Narcotic drug, §20-64-201.
Safety glazing materials, §20-27-901.

Material.

Medicaid fraud, §20-77-901.

Maternity unit.

Shaken baby syndrome education
program, §20-9-1401.

Mausoleum.

Cemeteries, §20-17-1002.

Meat.

Inspection, §20-60-203.

Meat food product.

Inspection, §20-60-203.

Medicaid.

Alternative community services
waiver, §20-48-1001.
Child health management services,
§20-48-1102.
Fairness and due process, §20-77-1702.
Intermediate care facilities,
§20-48-901.
Long-term care, options counseling,
§20-10-2101.
Long-term care facilities and
administrators, §20-10-1601.

DEFINED TERMS —Cont'd**Medicaid —Cont'd**

Medicaid integrity audit contracts.

Contingency fee prohibited,
§20-77-125.

Medicaid provider-led organized care
act, §20-77-2703.

Prescription drug access improvement,
§20-77-1403.

Third party liability, §20-77-306.

Medicaid-covered service.

Low income disabled working persons,
§20-77-1203.

Medicaid integrity audit contract.

Contingency fee prohibited,
§20-77-125.

Medicaid provider.

Medicaid fraud, §20-77-901.

Medicaid recipient.

Fraud, §20-77-901.
Long-term care facilities and
administrators, §20-10-110.

Medical assistance.

Immunity for seeking medical
assistance for drug overdose,
§20-13-1703.

Public assistance, §20-76-101.

Medical assistance programs.

Medical assistance programs integrity
law, §20-77-1303.

Medical care.

Health care decisions act, §20-6-102.

Medical emergency.

Abortions.
Parental involvement enhancement
act, §20-16-803.
Women's right to know act,
§20-16-1702.

Human heartbeat protection act,
§20-16-1302.

Pain-capable unborn child protection
act, §20-16-1402.

Unborn child pain awareness and
prevention act, §20-16-1102.

Medical facilities.

Emergency medical services,
§20-13-202.
Health facilities services, §20-9-201.
Long-term care facilities and services.
Office of long-term care, §20-10-213.
Smoking at medical facilities,
§20-27-705.

**Medical or allied health
professional.**

Poison control, drug information and
toxicological laboratory services,
§20-13-503.

DEFINED TERMS —Cont'd**Medical professional.**

Volunteer health care act, §20-8-803.

Medical school.

Unclaimed bodies, §20-17-701.

Medical staff.

Peer review fairness act, §20-9-1303.

Medical transportation.

Assessment fee and program on medical transport providers, §20-77-2802.

Medical transportation provider.

Assessment fee and program on medical transport providers, §20-77-2802.

Medical waste.

Disposal, §20-32-101.

Medicare cost report.

Assessment fee on hospitals to improve health care access, §20-77-1901.

Member of the family.

Achieving a better life experience program act, §20-3-103.

Mental deficiency.

Mental health interstate compact, §20-50-101.

Mental health professional.

Behavioral health crisis intervention protocol act, §20-47-803.

Mental health services provider.

Mental health services provider duty to warn, §20-45-201.

Mental illness.

Mental health interstate compact, §20-50-101.

Treatment, §20-47-202.

Mentally retarded.

Treatment of individuals with developmental disabilities, §20-48-202.

Mental retardation services.

Treatment of individuals with developmental disabilities, §20-48-202.

Midnight census.

Long-term care facilities and administrators, §§20-10-1401, 20-10-1601.

Mifepristol.

Abortion-inducing drugs safety act, §20-16-1503.

Mifepristone.

Abortion-inducing drugs safety act, §20-16-1503.

Drug-induced abortions, §20-16-603.

Mifeprix regimen.

Abortion-inducing drugs safety act, §20-16-1503.

DEFINED TERMS —Cont'd**Milk hauler.**

Grade "A" milk program, §20-59-402.

Milk inspection fee.

Grade "A" milk program, §20-59-402.

Milk inspection fees fund.

Grade "A" milk program, §20-59-402.

Milk or cream station.

Milk and dairy products, §20-59-201.

Milk plant.

Grade "A" milk program, §20-59-402.

Milk processor.

Milk and dairy products, §20-59-601.

Milk sherbet.

Milk and dairy products, §20-59-201.

Milk solids not fat.

Milk and dairy products, §20-59-201.

Mine.

Blasting, §20-27-1302.

Minor.

Abortion, parental involvement enhancement act, §20-16-803.

Anatomical gifts, §20-17-1202.

Sex discrimination by abortion prohibition act, §20-16-1903.

Minority.

Minority health commission, §20-2-101.

Miscarriage.

Vital statistics, §20-18-102.

Mobile home.

Mobile home and trailer parks, §20-27-1201.

Mobile nuclear medicine service.

Radiation protection, §20-21-203.

Modular home.

Manufactured home standards, §20-25-102.

Motor vehicle.

Protection of children from secondhand smoke, §20-27-1902.

Multiagency plan of services.

Treatment of mentally ill, §20-47-502.

Multiplier.

Long-term care facilities and administrators, §20-10-1601.

Narcotic drug.

Alcohol and drug abuse, §20-64-201.

National accrediting organization.

Child health management services, §20-48-1102.

Treatment of individuals with developmental disabilities, §20-48-101.

National criminal history check.

Criminal background checks for emergency medical services personnel, §20-13-1101.

DEFINED TERMS —Cont'd**National criminal history records check.**

Criminal background checks for service providers, §20-38-101.

National health care safety network.

Health facility infection disclosures, §20-9-1202.

Naturally occurring radioactive material.

Radiation protection, §20-21-203.

Needleless systems.

Needlestick safety and prevention, §20-9-311.

Nematode.

Pesticides, §20-20-203.

Net operating revenue.

Assessment fee and program on medical transport providers, §20-77-2802.

Net patient revenue.

Assessment fee on hospitals to improve health care access, §20-77-1901.

Net worth.

Family savings initiative, §20-86-104.

New.

Bedding, §20-27-201.

Newborn.

Newborn hearing, screening, tracking and intervention, §20-15-1502.

Newborn infants at risk.

Hearing screening program, §20-15-1102.

Newborn infant with hearing impairment.

Screening program, §20-15-1102.

New drug.

Food, drug and cosmetic act, §20-56-202.

New installation.

Elevators, dumbwaiters and escalators, §20-24-101.

New material.

Unlawful sale of bedding, §20-27-2701.

New resident.

Long-term care facilities and administrators, §20-10-1802.

Next of kin.

Missing in America project act, §20-17-1402.

Niche.

Cemeteries, §20-17-1002.

Night shift.

Long-term care facilities and administrators, §20-10-1401.

Noncommercial applicator.

Pesticides, §20-20-203.

DEFINED TERMS —Cont'd**Noncommunity public water system,**
§20-28-102.**Noneconomic detriment.**

Medical assistance, §20-77-702.

Nonembryonic stem cell research.

Newborn umbilical cord blood initiative, §20-8-503.

Nonemergency ambulance services.

Assessment fee and program on medical transport providers, §20-77-2802.

Nonfriable asbestos-containing material,
§20-27-1003.**Non-full-size crib.**

Children's product safety, §20-27-1602.

Nonprofit.

Rehabilitation services, §20-79-203.

Nonprofit community program.

Treatment of individuals with developmental disabilities, §20-48-101.

Nonprofit hospital.

Health facilities services, §20-9-201.

Nonprofit medical facility.

Health facilities services, §20-9-201.

Nonqualified distribution.

Achieving a better life experience program act, §20-3-103.

Nonstate government-owned hospital.

Assessment fee on hospitals to improve health care access, §20-77-1901.

Nontransient noncommunity water system,
§20-28-102.**Nuclear gauge.**

Radiation protection, §20-21-203.

Nuclear medicine.

Radiation protection, §20-21-203.

Nuclear pharmacy.

Radiation protection, §20-21-203.

Nurse aide.

Long-term care facilities and administrators, §20-10-1401.

Nursing facilities.

Long-term care, options counseling, §20-10-2101.

Long-term care facilities and administrators, §§20-10-1401, 20-10-1601.

Withholding CPR in nursing facilities for unwitnessed deaths, §20-17-104.

Obligations.

Medicaid fraud, §20-77-901.

Occupant.

Lead poisoning prevention, §20-27-602.

DEFINED TERMS —Cont'd**Ocean catfish.**

Catfish marketing, §20-61-206.

Ocular practitioner.

Medical assistance, §20-77-501.

Official establishment.

Meat inspection, §20-60-203.

Official inspection mark.

Meat inspection, §20-60-203.

Official written order.

Narcotic drug, §20-64-201.

Off-site.

Medical waste disposal, §20-32-101.

Of unsound mind.

Health facilities and services.

Consent to treatment, §20-9-601.

OLTC.

Long-term care facilities, protection of residents, §20-10-1202.

Ombudsman.

Long-term care facilities, protection of residents, §20-10-1202.

On-site.

Medical waste disposal, §20-32-101.

On-the-job training.

Public assistance, §20-76-402.

Oocyte.

Human cloning, §20-16-1001.

Open pit mine.

Blasting, §20-27-1302.

Operating costs.

Family savings initiative, §20-86-104.

Operator.

Blasting, §20-27-1302.

Criminal background checks for service providers, §20-38-101.

Tanning salons, consent required, §20-27-2201.

Opioid.

Combating prescription drug abuse, §20-7-702.

Naxalone access act, §20-13-1803.

Prescription drug monitoring program, §20-7-603.

Opioid antagonist.

Naxalone access act, §20-13-1803.

Opioid-related drug overdose.

Naxalone access act, §20-13-1803.

Options counseling for long-term care, §20-10-2101.**Oral deaf individual.**

Interpreters for deaf, deafblind or hard of hearing persons, §20-14-802.

Oral interpreting.

Interpreters for deaf, deafblind or hard of hearing persons, §20-14-802.

Order.

Medical assistance programs integrity law, §20-77-1303.

DEFINED TERMS —Cont'd**Organ procurement organizations.**

Anatomical gifts, §20-17-1202.

Others.

Radiation protection, §20-21-203.

Other sweeteners.

Milk and dairy products, §20-59-201.

Outpatient psychiatric center.

Health facilities services, §20-9-201.

Outpatient surgery center.

Health facilities services, §20-9-201.

Override.

Medicaid, §20-77-123.

Owner.

Lead poisoning prevention, §20-27-602.

Long-term care facilities and services, §20-10-903.

Rabies control, §20-19-302.

Owner or operator.

Asbestos removal, §20-27-1003.

Package.

Meat inspection, §20-60-203.

Packer.

Eggs, §20-58-202.

Palliative care.

Palliative care and quality of life interdisciplinary task force, §20-8-701.

Panoramic wet source storage irradiator.

Radiation protection, §20-21-203.

Parent.

Abortions.

Parental involvement enhancement act, §20-16-803.

Anatomical gifts, §20-17-1202.

Newborn hearing, screening, tracking and intervention, §20-15-1502.

Shaken baby syndrome education program, §20-9-1401.

Parity for mental health care.

ARKids first program, §20-77-1104.

Partial birth abortion, §20-16-1202.**Participating partner.**

Behavioral health crisis intervention protocol act, §20-47-803.

Participating provider.

Medicaid provider-led organized care act, §20-77-2703.

Participation.

Public assistance, §20-76-402.

Parts.

Anatomical gifts, §20-17-1202.

Party.

Long-term care facilities and administrators, §20-10-1902.

Passenger elevator, §20-24-101.

DEFINED TERMS —Cont'd**Pasteurization.**

Milk and dairy products, §20-59-201.

Pasteurized-blended cheese.

Milk and dairy products, §20-59-201.

Pasteurized cheese.

Milk and dairy products, §20-59-201.

Patient.

Lay caregivers for discharged patients,
§20-77-2602.

Mental health interstate compact,
§20-50-101.

Mental health services provider duty
to warn, §20-45-201.

Physician order for life-sustaining
treatment (POLST), §20-6-303.

Prescription drug monitoring program,
§20-7-603.

Patient days.

Long-term care facilities and
administrators, §20-10-1601.

Pattern of failure.

Long-term care facilities and
administrators, §20-10-1407.

Payments.

Medical assistance programs integrity
law, §20-77-1303.

Pay pond.

Catfish marketing, §20-61-202.

PC-DI-TL services system.

Poison control, drug information and
toxicological laboratory services,
§20-13-503.

Peer review committee.

Health facilities and services,
§20-9-501.

Perishable food.

Food regulation, §20-57-103.

Permanent cosmetics.

Body art, §20-27-1501.

Permanently unconscious.

Rights of the terminally ill or
permanently unconscious,
§20-17-201.

Permit.

Fireworks, §20-22-701.

Pesticides, §20-20-203.

Permit holder.

Cemeteries, §20-17-1002.

Permitted use.

Community homes for individuals with
developmental disabilities,
§20-48-603.

Perpetual care cemetery,

§20-17-1002.

Person.

Alcohol and drug abuse, §20-64-801.

Anatomical gifts, §20-17-1202.

DEFINED TERMS —Cont'd**Person —Cont'd**

Assisted living facilities, §20-10-1703.

Automated external defibrillator,
§20-13-1303.

Bedding, §20-27-201.

Biological agent registry, §20-36-102.

Blasting, §20-27-1302.

Catfish marketing, §20-61-202.

Children's product safety, §20-27-1602.

Controlled substances, §20-64-503.

Drug abuse control, §20-64-302.

Eggs, §20-58-202.

Fireworks, §20-22-701.

Flour and bread enrichment,
§20-57-302.

Health care decisions act, §20-6-102.

HIV shield law, §20-15-905.

Lead poisoning prevention, §20-27-602.

Long-term care facilities.

Unlicensed long-term care facilities,
§20-10-2003.

Manufactured home standards,
§20-25-102.

Meat inspection, §20-60-203.

Medicaid, §20-77-1702.

Medicaid fraud, §20-77-901.

Medical waste disposal, §20-32-101.

Milk and dairy products, §20-59-201.

Missing in America project act,
§20-17-1402.

Narcotic drug, §20-64-201.

Nonhuman primates, §20-19-601.

Pesticides, §20-20-203.

Radiation protection.

Electronic products, §20-21-303.

Ionizing radiation, §20-21-203.

Rights of the terminally ill or
permanently unconscious,
§20-17-201.

Swimming pools, §20-30-101.

Tanning salons, consent required,
§20-27-2201.

Unlawful sale of bedding, §20-27-2701.

Unlicensed long-term care facilities,
§20-10-2003.

Personally inform.

Health care decisions act, §20-6-102.

Personal responsibility agreement.

Public assistance, §20-76-101.

Personal services.

Assisted living facilities, §20-10-1703.

Person authorized to consent on the principal's behalf.

Health care decisions act, §20-6-102.

Person with mental illness.

Protocol and accountability for
facilities holding arrested person
with mental illness, §20-47-601.

DEFINED TERMS —Cont'd**Pesticide**, §20-20-203.**Pesticide dealer**, §20-20-203.**Pests.**

Pesticides, §20-20-203.

Physical restoration.

Rehabilitation services, §20-79-203.

Physician.

Abortions, §20-16-702.

Abortion-inducing drugs safety act,
§20-16-1503.

Drug-induced abortions, §20-16-603.

Pain-capable unborn child protection
act, §20-16-1402.Parental involvement enhancement
act, §20-16-803.

Partial birth abortion, §20-16-1202.

Women's right to know act,
§20-16-1702.

Anatomical gifts, §20-17-1202.

Dismemberment abortion,
§20-16-1802.

Emergency medical services.

Do not resuscitate orders,
§20-13-901.

Health care decisions act, §20-6-102.

Insect sting and other allergic
reactions emergency treatment,
§20-13-403.Mental health services provider duty
to warn, §20-45-201.

Narcotic drug, §20-64-201.

Nerve agents emergency treatment,
§20-13-603.Physician order for life-sustaining
treatment (POLST), §20-6-303.

Radiation protection, §20-21-203.

Rights of the terminally ill or
permanently unconscious,
§20-17-201.

Right to try act, §20-15-2103.

Sex discrimination by abortion
prohibition act, §20-16-1903.

Treatment of mentally ill, §20-47-202.

Unborn child pain awareness and
prevention act, §20-16-1102.

Vital statistics, §20-18-102.

**Physician order for life-sustaining
treatment**, §20-6-303.**Placenta.**Newborn umbilical cord blood
initiative, §20-8-503.**Place of business.**

Home health care services, §20-10-801.

Place of employment.

Clean indoor air act, §20-27-1803.

Plant regulators.

Pesticides, §20-20-203.

DEFINED TERMS —Cont'd**Podiatrist.**

Radiation protection, §20-21-203.

Political subdivisions.Community homes for individuals with
developmental disabilities,
§20-48-603.**Portable fire extinguishers,**

§20-22-602.

**Positive reinforcement outcome
bonus.**

Public assistance, §20-76-101.

Possession.

Eggs, §20-58-202.

Possessor.Large carnivore ownership and
possession, §20-19-501.**Post-acute head injury residential
care.**Long-term care facilities and services,
§20-10-101.**Post-acute head injury residential
care facility**, §20-10-101.**Post-fertilization age.**Pain-capable unborn child protection
act, §20-16-1402.**Postnatal tissue and fluid.**Newborn umbilical cord blood
initiative, §20-8-503.**Postsecondary educational
expenses.**

Family savings initiative, §20-86-104.

Power elevator, §20-24-101.**Practitioner.**

Drug abuse control, §20-64-302.

Prescription drug monitoring program,
§20-7-603.**Preferred drug list.**

Medicaid, §20-77-123.

Pregnancy.Human heartbeat protection act,
§20-16-1302.Public funds to entities performing
abortions, prohibition,
§20-16-1601.Women's right to know act,
§20-16-1702.**Pregnant woman.**Abortion, parental involvement
enhancement act, §20-16-803.**Premiums.**

Medicaid, §20-77-1203.

Prescribe.Prescription drug monitoring program,
§20-7-603.**Prescriber.**Combating prescription drug abuse,
§20-7-702.

DEFINED TERMS —Cont'd**Prescriber —Cont'd**

Prescription drug monitoring program,
§20-7-603.

Prescription.

Prescription drug monitoring program,
§20-7-603.

Prescription drug.

Alcohol and drug abuse, §20-64-503.
Medicaid, §20-77-1403.

Prescription drug access program,
§20-77-1403.**Prescription drug monitoring
program,** §20-7-603.**Pressure piping.**

Boiler inspections, §20-23-101.

Pressure vessels.

Boiler inspections, §20-23-101.

Previously used.

Bedding, §20-27-201.

Primary care physician.

Medicaid, §20-77-1702.

Primary residence.

Electrical code, §20-31-102.

Primate.

Nonhuman primates, §20-19-601.

Principal.

Health care decisions act, §20-6-102.

Prior authorization.

Medicaid, §20-77-1702.

Private applicator.

Pesticides, §20-20-203.

Private care agency.

Personal care service providers,
§20-10-2302.

Privately operated hospital.

Assessment fee on hospitals to
improve health care access,
§20-77-1901.

Private organizations.

Treatment of individuals with
developmental disabilities,
§20-48-202.

Private practice.

Radiation protection, §20-21-203.

Private review agent.

Health facilities and services.
Utilization review, §20-9-902.

Probable gestational age.

Unborn child pain awareness and
prevention act, §20-16-1102.

**Probable post-fertilization age of the
unborn child.**

Pain-capable unborn child protection
act, §20-16-1402.

Process.

Drug abuse control, §20-64-302.

DEFINED TERMS —Cont'd**Processed cheese.**

Milk and dairy products, §20-59-201.

Processor.

Catfish marketing, §20-61-202.
Eggs, §20-58-202.

Procurement organizations.

Anatomical gifts, §20-17-1202.

Producer.

Catfish marketing, §20-61-202.
Grade "A" milk program, §20-59-402.

Producer-distributor.

Grade "A" milk program, §20-59-402.

Product.

Catfish marketing, §20-61-202.

Product name.

Catfish marketing, §20-61-202.

Professional review action.

Peer review fairness act, §20-9-1303.

Professional review activity.

Peer review fairness act, §20-9-1303.

Professional review body.

Peer review fairness act, §20-9-1303.

Program.

ARKids first program, §20-77-1104.
Community services, §20-80-203.
Newborn hearing, screening, tracking
and intervention, §20-15-1502.

Program provider.

Mental health facilities, §20-46-702.

Project designer.

Asbestos removal, §20-27-1003.
Lead-based paint hazards,
§20-27-2503.

Prospective authorization.

Emergency medical care, §20-9-309.

Prospective donors.

Anatomical gifts, §20-17-1202.

Protective payee.

Suspicion-based drug screening and
testing of applicants for public
assistance, §20-76-702.

Protocol.

Protocol and accountability for
facilities holding arrested person
with mental illness, §20-47-601.

Provider.

Immunization, statewide registry,
§20-15-1201.
Medicaid, §20-77-1702.
Newborn hearing, screening, tracking
and intervention, §20-15-1502.

PSIG.

Boiler inspections, §20-23-101.

Psychiatric emergency services.

Behavioral health crisis intervention
protocol act, §20-47-803.

DEFINED TERMS —Cont'd**Psychiatric nurse practitioner.**

Behavioral health crisis intervention protocol act, §20-47-803.

Psychiatric physician assistant.

Behavioral health crisis intervention protocol act, §20-47-803.

Psychologist.

Mental health services provider duty to warn, §20-45-201.

Psychosurgery.

Treatment of mentally ill, §20-47-202.

Public agency.

Treatment of individuals with developmental disabilities, §20-48-202.

Public early childhood education program.

Birth through prekindergarten teaching credential and endorsement, §20-78-801.

Public health center.

Health facilities services, §20-9-201.

Public place.

Clean indoor air act, §20-27-1803.

Public recreation area.

Soccer goals, anchoring, §20-7-137.

Public-supported hospital.

Medical assistance, §20-77-103.

Public swimming pool, §20-30-101.**Public water system, §20-28-102.****Public water system supervision program, §20-28-102.****Purchase price.**

Milk processor, §20-59-601.

Purposely.

Dismemberment abortion, §20-16-1802.

Putative father.

Registration, §20-18-701.

Qualified acquisition costs.

Family savings initiative, §20-86-104.

Qualified business.

Family savings initiative, §20-86-104.

Qualified business capitalization expenses.

Family savings initiative, §20-86-104.

Qualified disability expense.

Achieving a better life experience program act, §20-3-103.

Qualified emergency medical service personnel.

Health care decisions act, §20-6-102.

Qualified expenditures.

Family savings initiative, §20-86-104.

Qualified first-time home buyer.

Family savings initiative, §20-86-104.

DEFINED TERMS —Cont'd**Qualified law enforcement agency.**

Prescription drug monitoring program, §20-7-603.

Qualified nonprofit community program.

Treatment of individuals with developmental disabilities, §20-48-101.

Qualified patient.

Rights of the terminally ill or permanently unconscious, §20-17-201.

Qualified person.

Abortion, women's right to know act, §20-16-1702.

Fire extinguishers, §20-22-602.

Qualified pharmacy home intravenous drug therapy provider.

Medical assistance, §20-77-801.

Qualified plan.

Family savings initiative, §20-86-104.

Qualified principal residence.

Family savings initiative, §20-86-104.

Quality control and quality assurance program.

Cigarette fire safety standard act, §20-27-2103.

Quality incentive pool.

Medicaid provider-led organized care act, §20-77-2703.

Quarry.

Blasting, §20-27-1302.

Radiation.

Electronic products, §20-21-303.

Radiation equipment.

Radiation protection, §20-21-203.

Radioactive material.

Radiation protection, §20-21-203.

Radioactive waste management.

Radiation protection, §20-21-203.

Radiography.

Radiation protection, §20-21-203.

Radioisotope teletherapy.

Radiation protection, §20-21-203.

Radiological response plan.

Nuclear planning and response grants, §20-21-501.

Reasonable medical judgment.

Pain-capable unborn child protection act, §20-16-1402.

Reasonably available.

Anatomical gifts, §20-17-1202.

Health care decisions act, §20-6-102.

Receiving facility or program.

Alcohol and drug abuse, §20-64-801.

Treatment of mentally ill, §20-47-202.

DEFINED TERMS —Cont'd**Receiving state.**

Mental health interstate compact,
§20-50-101.

Recipient.

Anatomical gifts, §20-17-1202.

Reciprocity.

Radiation protection, §20-21-203.

Reciprocity licensing.

Long-term care facilities and services,
§20-10-101.

Record.

Anatomical gifts, §20-17-1202.

Medicaid fraud, §20-77-901.

Recoupment.

Medicaid, §20-77-1702.

Medical assistance programs integrity
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Historic districts.

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